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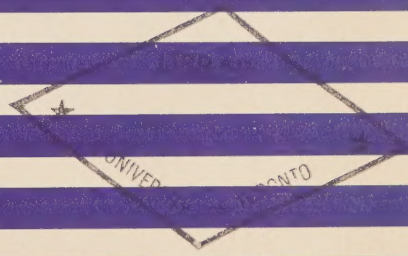
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The Constitutional Review 1968-1971

Secretary's Report

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**Canadian Intergovernmental
Conference Secretariat**

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Ottawa, 1974

FOREWORD

This Report on the constitutional review, which took place in Canada from 1968 to 1971, was submitted by the undersigned, while Secretary of the Constitutional Conference, to the Prime Minister of Canada and to the Premier of each province in 1972. In view of the significance of the review the federal and provincial governments have now agreed with the author's suggestion that this document should be made available to the public for the use of historians and others who have an interest in Canadian constitutional questions.

With this purpose in mind the Report is now being published to provide a description of the sequence of events and the work accomplished during the four years of intensive federal-provincial discussion of Canada's constitution. The document represents the author's assessment of events and views, therefore the description of positions and the interpretation of events do not engage the judgement nor the concurrence of individual governments. Since the document was submitted in April 1972 the events it describes should be read in the context of that earlier date.

Readers should refer to the Foreword to the 1972 edition which explains the general organization of the subject matter and which gives the background to the drafting of the Report which is now available in complete English and French language versions. It should be noted that all documents mentioned in the Report are not available for distribution.



Henry F. Davis,
Secretary
Canadian Intergovernmental
Conferences

Ottawa,
December 1974

FOREWORD TO THE 1972 EDITION

The constitutional review, in which the federal and provincial governments were actively engaged from 1968 until June 1971, came to a halt when the Victoria Charter did not receive the unanimous support of all governments.

In the foreword to the public record of the last meeting of the Constitutional Conference, the Prime Minister of Canada said:

Despite the failure to secure the unanimous agreement that had been hoped for, the Charter ... represents the most significant and comprehensive development in the search for a basis of constitutional revision since Confederation. It is hoped that it may still provide the foundation for agreement in order that the Constitution may be 'repatriated' and made amendable entirely in Canada.

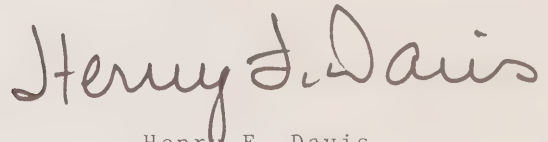
It is with this consideration in mind that the Secretariat decided to bring together in this Report the essential elements in the process of constitutional review that has taken place so far, so that when another attempt at constitutional revision is undertaken the considerable experience accumulated over the last years may be readily available to facilitate further progress.

This paper therefore describes the development of the recent constitutional review and deals with both its structure and methodology as well as with substance. Although details of the discussions and negotiations that took place have been left to the official records of the relevant meetings, the state of progress achieved and the difficulties encountered in the various subject areas are also described.

The Table of Contents is fully descriptive of the Report which is divided into three Parts, each of which is subdivided into Chapters. Part I gives the background to the constitutional revision and outlines the chronological development of each of the Constitutional Conferences. Part II analyzes

the discussions and the work accomplished within the various committees of the review, while Part III describes questions of procedure and administration. Appendices giving additional details of general interest, such as lists of delegates and of meetings, have also been attached separately and referred to in the text where appropriate.

This account has been prepared entirely as a joint effort by the remaining members of the Secretariat, with chapters in English or French at the choice of the drafting officer. It is based exclusively on the records available to the Secretariat and on the experience of its members who participated intimately but without political involvement in the development of the constitutional review.

A handwritten signature in dark ink, reading "Henry F. Davis". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Henry F. Davis,
Secretary of the
Constitutional Conference

Ottawa,
April 14, 1972

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PART I

BACKGROUND AND GENERAL OUTLINE OF THE
CONSTITUTIONAL REVIEW

Chapter 1 - The Antecedents to the Constitutional Review

The constitutional review can be said to have had two beginnings, both of which occurred in 1966. On the one hand there was a call from some provincial Premiers for a basic review of constitutional arrangements. Then in the summer of that year there was a federal decision to create a steering committee which would undertake the studies required to build a federal constitutional policy. At that time, however, the federal government decided that it would not wish to proceed with federal-provincial constitutional discussions for perhaps another two years.

The constitutional review therefore had two beginnings, one which was to result in the Confederation of Tomorrow Conference in Toronto and another which was to culminate in the first Constitutional Conference in February 1968. In order to maintain this initial distinction, the launching of the constitutional review will be described in two parts: first, the events leading to and the proceedings of the Toronto Conference; and secondly, these same events and proceedings with respect to the Constitutional Conference of February 1968.

A. The Confederation of Tomorrow Conference, November 27-30, 1967

In 1966 the Premiers of both Quebec and Ontario expressed the view that a review of the constitution was called for. At the Tax Structure Committee meeting of September 1966, Premier Daniel Johnson of Quebec said:

..., the new Québec Government is committed to the fundamental task of obtaining legal and political recognition of the French-Canadian nation; among other things, this will require a new constitution to guarantee equal collective rights in our country to English-speaking and French-speaking Canadians, as well as to give Québec all the powers needed to safeguard its own identity.

Premier Robarts raised the question at the Federal-Provincial Conference of October 24 to 28, 1966, when he said:

If we can meet the present requirements for financial redistribution, then we shall be able to concentrate on the broader and basic questions of re-shaping the Canadian federation prior to entering into more binding arrangements.

There was no federal response to either of these "proposals", and in January of 1967, Premier Robarts surprised the federal government by announcing, by way of the Ontario Speech from the Throne, his intentions as follows:

The second development of significance will be the convening of a Confederation of Tomorrow Conference. This assembly will be asked to approve the policy of my government to invite the leaders of all provinces and the federal government to a conference where the future course of our federal system of government will be discussed. My government considers it appropriate for Ontario, as one of the founding provinces of Confederation, to provide the inspiration and setting for such discussion.

It is the hope of my government that the Confederation of Tomorrow Conference will herald the beginning of a series of meetings through which our 11 governments are brought into closer communion and Canadian unity strengthened.

This declaration prompted an immediate letter from the then Prime Minister of Canada, Mr. Pearson, "to communicate to you without delay some points of concern that occur to me". Acknowledging Premier Robarts remarks of October 1966, Mr. Pearson suggested that he had understood this to mean discussions among the provinces perhaps at the annual conference of Premiers and attended by a limited number of federal observers. His principal concern was that there was no precedent for a federal-provincial conference being called by a province and that such a precedent might not be wise or desirable and might add to rather than diminish the strains on Confederation. He then suggested that Ontario could either change this into an item to be put on the agenda of a federal-provincial conference

which "might be called in the normal way at some time in the coming months", or change the formula of his conference to an interprovincial one.

Mr. Robarts replied in turn on February 1, that he had not envisaged this initial conference as an infringement on the jurisdictional authority of the federal government or as a federal-provincial conference "as we have come to know them". He said the conference should not be seen as a forum for decision-making or constitutional drafting, but as an opportunity for a wide ranging discussion "unfettered by the techniques and procedures in effect at various types of conferences held over the past several years". He also expressed his intentions to proceed with the conference as envisaged.

On February 28, Mr. Pearson, in a move calculated to regain the initiative for the federal government, wrote to all the Premiers enclosing the above exchange of correspondence and inviting them to an informal meeting with him on July 5, following their swearing-in as Privy Councillors by the Queen as part of Centennial year events.

For three days in May (the 18th, 19th and 23rd) the Legislature of Ontario debated, then passed a resolution calling for a Confederation of Tomorrow Conference as originally conceived. On June 9, after speaking with Mr. Pearson by telephone, Mr. Robarts was to advise him by letter that Ontario was now prepared to treat the Conference as an interprovincial one, with federal participation by way of observers and with consultation on the agenda. Mr. Pearson replied on July 15, by reiterating his view that an interprovincial event would be a logical first step. The public announcement of this change was made following the informal meeting of Premiers with Mr. Pearson in Ottawa on July 5th. The press release said that Mr. Robarts intended to extend invitations to the federal and provincial governments to attend the Confederation of Tomorrow Conference to be held in the fall, and that the Prime Minister of Canada had indicated the federal government would be represented by observers at this proposed inter-provincial conference. The press release went on:

It was agreed that such a conference, which would permit a free exchange of views

among the provinces on a number of problems, could form a useful first step toward consideration of the working of the Canadian federal structure.

The press release also reported that Mr. Pearson intended to invite the Premiers to a federal-provincial conference early in 1968 to examine the possibility of adopting a common constitutional bill of rights, binding on both federal and provincial governments:

The Prime Minister expressed the view that the study of a bill of rights, while in no way preventing a review of other constitutional matters as might later be required, would provide the opportunity to begin an examination of the constitution in relation to the fundamental rights and freedoms that should form the basis of Canadian federalism.

It is generally agreed that at this time there was growing public support for a review of the constitution. Although Canada's centennial year had created a spirit of optimism, a number of serious issues were apparently brewing below the surface. In particular the general issue of French Canada was gaining increasing attention, with special focus on language rights and the development of concepts of "deux nations", "deux cultures" and "special status". The general issue was increasingly reflected in Premier Daniel Johnson's statements and was to be dramatized by Général de Gaulle's "vive le Québec libre". There was also a spirit of anticipation created around the expected tabling of Book I of the Report of the Royal Commission on Bilingualism and Biculturalism.

Formal invitations to the Confederation of Tomorrow Conference were sent by Premier Robarts in late October in a letter to each province detailing expectations for the Conference. Mr. Pearson received a letter on November 1st, extending "to you and your government an invitation to be present or to be represented in whatever manner you consider appropriate" and including a resumé of the text that had been sent to the provinces. Although Mr. Pearson had insisted as late as October 31st in a radio and television interview that this was to be an interprovincial conference, Mr. Robarts appears to have

continued to take the view and hope that Ottawa would eventually decide on full participation. Mr. Pearson, in replying to Mr. Robarts' formal invitation, indicated that the federal government still viewed the Conference as an interprovincial one and named four officials to attend as federal observers. All provincial delegations were to be led by their Premiers, except British Columbia's which was headed by its Attorney-General, the Hon. R.W. Bonner. (Some Premiers however would be unable to remain beyond the first three days.)

The Confederation of Tomorrow Conference formally opened on Monday, the 27th of November, on the 54th floor of the Toronto-Dominion Centre for sessions which were to last a total of three days and a half. The complete proceedings were open to the press, radio and television. As background material for the subjects on the agenda, Ontario provided the delegations with a series of Theme Papers, which were made public several days before the opening of the Conference. The only other printed document made public at the time was the separate Preliminary Statement presented by the Government of Quebec and subsequently published along with the complete proceedings of the Conference. It was understood by everyone present that the Conference was designed to elicit an expression of views and that no decisions would be made nor conclusions drawn. It was also understood and agreed that this was only the first in a series of meetings and consequently such specific matters as fiscal arrangements would be left to later meetings. The agenda consisted of a number of themes with suggested topics to be considered under each of them (see Appendix A). Although it was to prove difficult to separate matters this clearly, a general effort was made to adhere to this agenda throughout the Conference.

The first day of the Conference was taken up by opening statements from the leaders of each delegation and by a discussion of the goals of Canadians. Tuesday was devoted to the role of the English and French languages in Canada, and Wednesday to the ways in which the federal system could be improved, including the question of the machinery and structure for federal-provincial and interprovincial relationships in Canada. During the final proceedings on Thursday morning there was a brief private session of heads of delegations, followed by a final session for closing statements and

the adoption of a resolution. However, as discussions progressed a number of other basic themes emerged as well. In general, the debate appeared to be permeated almost constantly with either the issue of regional economic disparities or the question of two linguistic and cultural communities as it affected areas of social, cultural and educational policy. There were also extremely mixed views on whether constitutional change was necessary to achieve new satisfactory arrangements.

The Conference ended on an optimistic note with Premier Robarts recognizing that this was only the beginning, and that discussion of constitutional change would require the presence of the federal government. In the only reference to the federal-provincial conference, which was to take place the following February, Mr. Robichaud exhorted all provinces to be prepared to play a key role and, on the basis of the Toronto discussions, propose appropriate items for the agenda.

Given that everyone was aware of Mr. Pearson's own plans, the resolution adopted in the closing stages of the Toronto Conference indicated that there was not an unequivocal opinion, amongst the Premiers, regarding where the onus of future leadership should rest. The terms of this resolution were as follows:

That a committee of premiers and prime ministers, to be entitled the Continuing Committee on Confederation, be established.

Its terms of reference would be to analyse the proceedings and results of the Confederation of Tomorrow Conference and explore the subjects and the forum for future discussions. The Committee would pay particular attention to the problems of constitutional change, regional disparities and language practices and rights.

All governments, federal and provincial, will be consulted by the Committee.

Although the Premiers of Ontario, Quebec, Nova Scotia and Alberta were named to the Committee, it never met, nor could it have been expected to once the subsequent decisions of February 1968 had been made.

B. The First Meeting of the Constitutional Conference,
February 5-7, 1968 (No. 1)

While preparations for the Confederation of Tomorrow Conference were going forward in Toronto, in Ottawa the federal government was pursuing its own plans for the constitution. On May 10th, Mr. Pearson spoke in the House of Commons of plans for holding a special federal-provincial conference to consider the possibility of establishing a constitutional bill of rights for Canada. At the same time he also announced the appointment of Mr. Carl Goldenberg as a special adviser on constitutional matters and Mr. Ivan Head as assistant special adviser.

As described earlier, more specific plans for such a conference were to be announced following the Prime Minister's brief meeting with the Premiers on July 5th. Mr. Pearson's first elaboration of his plans was sent to the provinces on August 15. His letter outlined the basic considerations regarding a constitutional bill of rights which would cover political, legal, egalitarian, economic and linguistic rights, and suggested that a federal-provincial conference for discussion on this subject might be held in January or February 1968:

This brief outline of some of the matters that have to be considered will indicate how important and basic a discussion of a Bill of Rights could be for any future examination of our constitutional framework in a more general way. If we can achieve agreement on essential rights and on the way to define and protect them in all parts of Canada, I think we shall have made the most important single step that is required for the achievement of a satisfactory constitutional framework.

At this stage the plan was for a meeting of First Ministers with their Ministers of Justice and Attorneys General, followed by further meetings of the Ministers of Justice, and finally,

I would hope that those sessions would lead to a further definitive conference later in the year at which decisions on substance and method could be taken.

In one of the more notable replies Premier Daniel Johnson, having promised active participation, suggested that a bill of rights should be discussed as part of a general examination of the constitution and not as a preliminary step as seemed to be implied in Mr. Pearson's letter. Mr. Johnson went on:

Fortunately, the Conference ... which will be held in Toronto at the end of the month will give us an opportunity to begin such a general examination so that we will be able to study both questions concurrently and in relation to one another.

A second letter was sent by Mr. Pearson to the provinces on December 1st, the day following the Toronto Conference, proposing the specific dates of February 5 to 7, 1968, for the federal-provincial conference. Given the imminent tabling of the first report of the Royal Commission on Bilingualism and Biculturalism, it was proposed that an examination of the Commission's expected recommendations become a second item on the agenda. The provinces were also invited to suggest any "related matters" for the agenda and to consider whether some of the Conference sessions should be public, "bearing in mind of course that our discussions may eventually lead to decisions by both levels of government".

In January 1968, the federal government began a series of bilateral encounters, "for a preliminary exchange of views". During that month the federal Minister of Justice, Mr. Trudeau, and Mr. Goldenberg were to visit all the Premiers and their officials. The proposed agenda was sent out on January 16th and had now grown to four items of substance. In addition to the two original subjects, it now included the two questions of further constitutional review and of regional disparities, the latter having been added at the specific request of Nova Scotia.

Just prior to the Conference, all delegations were to receive copies of two federal papers, "A Canadian Charter of Human Rights" and "Federalism for the Future". As the Conference opened, the Government of Quebec would also make public its "Brief on the Constitution". At

the end of the Conference, a third federal paper, entitled "Federalism and International Relations", would be tabled but not discussed.

With the preliminaries behind them, the first Constitutional Conference convened at 10:00 a.m. on Monday, February 5 in the Confederation Room of the West Block of the Parliament Buildings in Ottawa, under the full glare of television lights (see Appendix A for the agenda). This would be the only Constitutional Conference to be chaired by Mr. Pearson, since on December 14 he had announced his intention to retire as Prime Minister of Canada. All provincial delegations were led by their Premiers, with Mr. Jean Beetz acting as Secretary of the Conference. Although the substance of the discussions for this first Constitutional Conference is reported in Chapter 6, it should be noted here that in general many provincial statements were to refer to themes dealt with in "Federalism for the Future" and to the need to begin a comprehensive review of the constitution.

The first day of the Conference was taken up by the opening statements of all heads of government, followed in the evening by a dinner at Government House for First Ministers and all other federal and provincial ministers. On Tuesday morning there was some discussion of the opening statements, after which the Chairman suggested a coffee break which would be followed by a private "executive session" to decide how to organize the rest of the agenda. During that private meeting the First Ministers agreed to set up a committee of officials which would meet during the afternoon to examine the question of continuing machinery to carry on the work of the Conference. On Tuesday afternoon the Conference examined the main subject on the agenda, "Rights of Canadians", but the discussions on both the recommendations of the Royal Commission on Bilingualism and Biculturalism and a constitutional Bill of Rights were very short, particularly the former, and by late in the day, the Conference was able to take up the question of regional disparities. In the evening the Premiers attended a private dinner given by Mr. Pearson at 24 Sussex, while other federal and provincial ministers were the guests of the Minister of Justice, Mr. Trudeau, for dinner in the Parliamentary Restaurant. On Wednesday morning there was further debate on regional disparities and shortly before lunch, Mr. Pearson put forward a five-point proposal on language rights.

The rest of the morning and a large part of the afternoon were devoted to trying to achieve an agreement on the latter question. The results are reflected in the Consensus on Language Rights issued at the close of the Conference (see Appendix B). The question of further constitutional review did not come up until the Conference was almost over, when Mr. Pearson reiterated his government's willingness to undertake a total review of the constitution as stated in "Federalism for the Future" and suggested an approach to the mechanisms required to carry out such a review. Subsequently, Mr. Daniel Johnson was to produce a draft resolution regarding the process for further constitutional review which incorporated the points made by the Prime Minister and which was later approved by the Conference with the addition, at Premier Robarts' request, of the mechanisms of federal-provincial relations to the list of constitutional subjects to be examined by the Constitutional Conference and the Continuing Committee of Officials. (See Conclusions of the February 1968 Constitutional Conference at Appendix B.)

In summary this first Constitutional Conference had looked at one truly constitutional issue, fundamental rights, at one issue with both constitutional and non-constitutional features, official languages, and at the non-constitutional features of a third issue, regional disparities. With respect to this last subject, there were virtually no references to the constitutional aspects of the question, the matter being discussed in contemporary, problematic terms in which no one saw a solution in a constitutional sense. The Conference had managed to focus on specific topics and had also been able to move forward on a matter of substance, the Consensus on Language Rights. In terms of its original objectives, the federal government had also succeeded in achieving its aim of an immediate agreement on language rights. However its desire to launch the review with a bill of rights had been frustrated by provincial hesitancy over entrenchment of so extensive a package of rights. Nevertheless, the overall effect was that a constitutional review would be undertaken on what were still essentially federal terms, and Mr. Pearson could retire with the knowledge that constitutional revision was now firmly under way.

Chapter 2 - The Constitutional Conferences -
A Chronological Outline

It was not until a full year after the initial Conference of February 1968 that the Prime Ministers and Premiers met again to discuss the constitution. But in the intervening twelve months, a number of events took place which would influence the constitutional review.

In the political arena, a number of the players changed. On April 20, 1968, following a leadership convention, the former federal Minister of Justice, Mr. Trudeau, was sworn in as successor to Lester Pearson. The Hon. John Turner became the new Minister of Justice. During the general federal election which was subsequently called for June 25, the status of Quebec and the French language became one of the major issues. Following his election with an impressive majority, Mr. Trudeau tabled in Parliament for first reading on October 17 Bill C-120, "An Act respecting the status of the official languages of Canada". This legislative measure was to be of considerable, if indirect, significance in the constitutional discussions which were to follow.

Two provinces also changed leaders, but not governments, later in the year. Premier Ernest Manning of Alberta announced, in October, his intention to retire and on December 6, 1968, he was succeeded by Mr. Strom. In Quebec, the unexpected death of Premier Daniel Johnson at La Manicouagan on September 26 resulted in the appointment of the Minister of Justice, the Hon. Jean-Jacques Bertrand, as his successor.

On the constitutional side, work was begun on the basis of the consensus of February 1968. The first Secretary of the Constitutional Conference, Mr. Edgar Gallant, was appointed by the Prime Minister on March 28, following consultation with all the provinces. Mr. Gallant had been Director of the Federal-Provincial Relations Division of the Department

of Finance. On May 1, the Prime Minister wrote to the Premiers to propose:

... that a meeting of senior officials be held during the last week of May with a view to considering the composition and structure of the Permanent Committee of Officials, and to initiating the discussion on the programme of work required to achieve the objectives of the Constitutional Conference.

At the time he also announced that Mr. Gordon Robertson, Clerk of the Privy Council and Secretary to the Cabinet, would head the federal delegation.

The Continuing Committee of Officials met in Mont Gabriel, Quebec, on May 29 and 30 for its first meeting. During this meeting the Sub-Committee on Official Languages was established. The C.C.O. was to meet another four times and the S.C.O.L. twice before the second Constitutional Conference in February 1969. (For details on the work of the C.C.O. see Chapter 4 and Appendices. Details of the work of the S.C.O.L. will be found in Chapter 5 and Appendices.)

A. The Second Meeting of the Constitutional Conference
(No. 2)

In response to reports that the Premiers, at their annual meeting in August 1968 in Waskesiu, Saskatchewan, had expressed concern that the Conference had not reconvened before then and that the Continuing Committee seemed to be going beyond its terms of reference, the Prime Minister wrote to the Premiers on August 15 to report on the activities of the C.C.O. and to suggest that a second session of the Constitutional Conference be held in late November or early December, 1968. On the basis of the responses to this letter, Mr. Trudeau planned to propose the dates of December 9, 10 and 11. However Premier Johnson's death and Premier Manning's intention to retire in December led him to consult both Alberta and Quebec as to the effect of these events on their participation. There seemed to be no difficulty and on October 11, at the suggestion of Mr. Manning and with the concurrence of Mr. Bertrand, Mr. Trudeau

was to call the second Constitutional Conference for December 16, 17 and 18.

On November 15, a tentative agenda was proposed by the Chairman. This covered the objectives of the Constitutional Conference, the objectives of Confederation and basic principles of the constitution, and the first five of the specific questions listed in February 1968, as these had been reviewed by the C.C.O. In reply to the proposed agenda, Nova Scotia suggested that regional disparities should be given a priority position second only to language rights. Manitoba, in a letter distributed to all Premiers, indicated to the Chairman that fiscal questions should be given priority over the agenda items which had been proposed. Ontario was of the view that fiscal questions should also be studied and pressed as well for the inclusion of additional items from the list of constitutional questions of February 1968. Mr. Robarts added at the time that he hoped the forthcoming Constitutional Conference would not be faced with fixed federal positions, citing as an example the Tax Structure Committee.

Further planning was suspended however when on December 11, five days before the Conference was to open, Premier Bertrand asked the Prime Minister if the Conference could be postponed because of his ill health. Mr. Trudeau polled the Premiers on the delay and put forward the suggestion to reconvene on February 10, 11 and 12, 1969. All provinces were to accept the postponement and revised dates, the view being expressed that the participation of the Premier of Quebec was essential to the constitutional discussions.

On December 24, Mr. Trudeau proposed a revised agenda for the Conference, which attempted to accommodate points which had been raised earlier by Nova Scotia, Manitoba and Ontario. He suggested that regional disparities could be raised under objectives of Confederation, the constitutional aspects of the taxing and spending powers highlighted under distribution of powers, and the full seven questions listed in February 1968 included. Premier Weir of Manitoba was not satisfied with the revisions, stating in his letter of January 8, 1969 to the Prime Minister, in reference to the previous Manitoba suggestion for the priority examination of certain fiscal questions, that he was writing to his colleagues to suggest that the Confederation

of Tomorrow Conference be reconvened "to discuss these matters of clear constitutional concern". In reply, Mr. Trudeau was to write to Mr. Weir on January 27, explaining further the accommodation he had made and indicating that the agenda as revised was acceptable to all other Premiers. On February 1, the Prime Minister received a series of telegrams from the Prairie Premiers, meeting as the Prairie Economic Council, asking that priority be given at the Conference to fiscal problems and requesting a ruling from the Supreme Court of Canada on the federal official languages bill. These pressures however would not result in modifying the agenda and its terms remained as had been proposed on December 24. (See Appendix A for agenda of Conference.) On February 3, in order to clarify the situation, and after obtaining the concurrence of the provinces, Mr. Trudeau was to table the correspondence on the agenda in Parliament.

Plans had been made to release a number of documents in the week preceding the Conference as originally scheduled, but with the change of Conference dates, it was subsequently agreed to hold all documents until the week of February 3rd. However, some documents were to be made public ahead of this date. British Columbia issued its Brief on December 13, 1968, and Manitoba released its booklet, "What tomorrow, Canada?", on January 30. The Quebec "propositions" for a new constitution were leaked and were published on October 10, 1968. Similarly, portions of a draft of the Secretary's report to the Conference on discussions in the Continuing Committee appeared in the newspapers on January 16 and 17. The final version of this last document, together with the report of the Continuing Committee to the Conference and the Conference agenda were officially released on February 6 and other documents were issued during the meeting.

Prior to this Conference, as had been the case for the first one, the federal Minister of Justice, now Mr. Turner, visited the provinces for informal discussions on the substance of the Conference, and more particularly on the official languages bill and the federal programme on the constitution.

As with the first one, the second Constitutional Conference met in the Confederation Room of the West Block at 10:00 a.m. on the 10th of February, 1969,

under the glare of television arc lamps. All delegations were led by their First Minister, except for Saskatchewan which was represented by the Hon. D.G. Steuart, Deputy Premier and Minister of Finance. In the room were also a limited number of observers invited by each participating government. This would be Mr. Trudeau's first Conference as Prime Minister and Chairman, and the first for Messrs. Strom and Bertrand as Premiers. This was also the first plenary Conference to be administered by the Secretariat.

The first day of the meeting was taken up with opening statements which covered all items on the agenda with emphasis on the language question, regional disparities and fiscal and economic matters. In the evening, all First Ministers and ministers were received for dinner by the Governor General. Tuesday morning was devoted to the question of the distribution of powers, ostensibly the taxing and spending powers but current, non-constitutional issues predominated. The afternoon was spent on official languages, in particular the official languages bill and the question of bilingual districts. There was also a brief discussion on fundamental rights which was continued on Wednesday morning. Later the same morning, delegates took up the question of regional disparities, continuing it in the afternoon until 3:45 p.m. This left just over an hour to wrap up the Conference and approve the conclusions.

In order to expedite the approval of the conclusions, the Chairman had suggested earlier that the Continuing Committee of Officials should meet between sessions to draft a first, anticipatory text. During the first two and one half days, the C.C.O. met three times and prepared a draft covering most of the items on the agenda. Thus, as the Conference was drawing to a close the First Ministers were able to review the conclusions that had been prepared and also thereby agree on a number of matters which had not been given more than a passing reference during their own discussions. Items 3, objectives and principles, 4 f) amendment and 4 g) mechanisms, were not discussed and were therefore omitted. (For the text of the Conclusions of the Conference see Appendix B.) It might be noted that in order to ensure that all delegation heads would be in attendance for the completion of the Conference conclusions, the federal government provided special air transport both east and west. This practice would be repeated at a number of later meetings for the same reason.

In summary, as in February 1968, the Conference would seem to have had some difficulty in separating the constitutional and non-constitutional aspects of the various subjects examined. There was a strong propensity to deal with the latter and even the discussion on languages centered on a bill before Parliament rather than on the constitutional features. However, it would appear that the objective of accelerating the process of constitutional review had been met. New mandates were given and five ministerial committees were created. The Continuing Committee of Officials was given new directions in several areas and the Tax Structure Committee asked to convene. The First Ministers also decided that they should meet more frequently and hold private working sessions, in order "to provide more continuous direction to the process of constitutional review".

B. The First Working Session of the Constitutional Conference (No. 3)*

The second open Conference had given new impetus to the constitutional review. Only two weeks after it had adjourned, the Prime Minister wrote to the Premiers indicating which of his colleagues would represent the federal government on the committees of ministers that had been established and proposing the dates of June 18 to 20, 1969, for the first working session of the Conference. The provinces were quick to respond and the proposed dates were accepted, when, on April 1, Premier Bertrand of Quebec asked the Prime Minister if it would be possible to move the working session forward to June 11 to 13, since the Union Nationale Party Convention had been scheduled for June 19 to 21. These revised dates had been accepted by all delegations, and preparations were well under way when, on May 22, Premier Weir of Manitoba, having called a provincial election for June 25, asked if the working session could be postponed until later. However, following renewed consultation with the other Premiers, six of whom could not be available on any alternative dates, it was agreed to proceed as planned on June 11.

* The number in brackets indicates the chronological order of each of the seven occasions when the First Ministers met as the Constitutional Conference. These numbers should be distinguished from the actual titles used for each of these meetings which, after the first two, did not reflect this chronological order.

In accordance with the mandate given to it by the second Constitutional Conference, the Continuing Committee of Officials met twice (its 6th and 7th meetings) before the working session to examine the taxing and spending powers and the constitutional aspects of regional disparities. In addition, all ministerial committees had an initial meeting and the Sub-Committee on Official Languages met for a third time (see Appendix D).

The decision to resort to "working sessions" would have the effect of taking the review out of the public arena, reducing the time spent on opening and general statements and facilitating concentration on complex and more technical issues, even if it did not reach the point of permitting officials to participate openly in discussions with the First Ministers. It was also hoped that working sessions would be much smaller affairs, with fewer ministers, a limited number of senior advisers, and no observers. In this spirit, it was therefore decided that there should be no verbatim record of this first working session and that no documents would be released before the Conference except the agenda. The Conclusions (see Appendix B) and some other documents were however released following the Conference.

The first working session was held in the Centennial Room of the former Ottawa Union Station which had now been transformed into a Conference Centre. All delegations were led by their First Ministers, including Manitoba despite impending provincial elections. A change in the seating plan was also in effect. Quebec and Ontario were now positioned at the ends of the horseshoe, flanking the Secretary, instead of to the left and right of the federal group. The other delegations followed their regular pattern in reverse, so that Alberta and Newfoundland were now to the right and left of the Chairman. There were two reasons for this change. First it had been partly dictated by the configuration of the room which did not make it feasible to seat the three largest delegations at one end of the table. However, of more importance, it was hoped that this change in position of the largest delegations would have the effect of increasing the involvement of others.

On the first day of the working session, Wednesday, the First Ministers examined the taxing

powers on the basis of federal and Ontario working papers and on some provincial propositions. Wednesday afternoon and part of Thursday morning were devoted to discussion of the spending power. On Thursday afternoon there was a discussion of the constitutional aspects of regional disparities and an examination of the progress reports from the five ministerial committees, including the Committee of Ministers on Regional Disparities which had concerned itself with the current, non-constitutional aspects of its subject matter. The First Ministers then decided not to continue into a third day as had originally been planned; the future programme of work for the constitutional review would be left to an early exchange of correspondence.

The First Ministers' discussions on the three topics on the agenda had been based on individual briefings received from their respective officials on the Continuing Committee rather than on a formal report from the C.C.O. or a briefing paper from the Secretary. A discussion "check list" was provided by the Secretariat, however, to guide participants through the documents on the spending power. It should also be noted that the federal papers on the taxing and spending powers examined by the First Ministers had been modified to take into account comments made by provincial officials during the two C.C.O. meetings where these subjects had been reviewed prior to their presentation to the working session.

Entertainment during the meeting varied substantially from the two earlier Conferences since participants were able to take advantage of events coinciding with the opening of the National Arts Centre that same week. On Wednesday evening, as guests of the federal government, all delegates and advisers attended a concert by the Montreal Symphony Orchestra, followed by a buffet supper. On Thursday evening, participants returned to the National Arts Centre as the guests of the Government of British Columbia for a production of the play "The Ecstasy of Rita Joe", presented by the Vancouver Playhouse Theatre. This last event was later followed by a reception in the National Arts Centre Salon to which members of the cast had been invited.

C. The Third Meeting of the Constitutional Conference
(No. 4)

Although the First Ministers had agreed at the end of their meeting in June to meet again before the end of 1969, there had been no time to discuss the future programme of work. Ten days after the meeting, on June 23, the Prime Minister was therefore to write to the Premiers in order to suggest a work plan for the second half of the year; he also proposed that the next Conference be planned for December 8 - 10, 1969. Both the programme of work and the Conference dates were accepted. Contrary to the two previous meetings, the question of modifying these dates would not subsequently arise.

On July 1, Mr. Edgar Gallant was succeeded by Mr. Henry F. Davis as Secretary of the Constitutional Conference. Mr. Davis had been a special adviser to the Privy Council Office and had, as well, acted as Secretary of the federal delegation. His appointment as Secretary had been ratified at the June working session.

In accordance with the favourable responses to the Prime Minister's letter of June 23rd, the various committees of the Conference began their work in preparation for the December meeting. The Continuing Committee of Officials met twice to consider the specific questions relating to the taxing and spending powers and regional disparities which had been referred to it by the First Ministers, and to explore in a preliminary way the question of income security and social services. At the first of these meetings, two new "temporary" sub-committees of experts were created to deal with certain technical aspects of the questions relating to sales taxes and death duties. Each of these sub-committees would meet once before the Conference. For their part, the Sub-Committee on Official Languages would hold its fourth meeting and the ministerial committees on fundamental rights, the judiciary and official languages, would each hold a second meeting (see Appendix D).

In a second letter to the Premiers on October 21, Mr. Trudeau proposed a formal agenda and also took the opportunity to propose a separate non-constitutional federal-provincial conference for January or February 1970. It was proposed that this

latter meeting could deal with the subject of pollution, as had been specifically recommended by the Premiers' Conference in Quebec City in August. It could also look at a report from the Tax Structure Committee and possibly examine the existing mechanisms for intergovernmental consultation. It was hoped that this federal-provincial conference which would provide the heads of government with their first occasion in over four years to deal with current non-constitutional issues, would, as well, meet the concern of certain Premiers who felt that the attention given to constitutional questions should not be at the expense of current problems which they considered to be more vital.

The third meeting of First Ministers in ten months came to order on Monday, December 8, at 10:00 a.m. in the main hall of the Conference Centre, again in full view of the Canadian public. All heads of government were present. The only new face in the inner circle was that of Mr. Edward Schreyer, who had replaced Mr. Weir following the defeat of his government in the Manitoba elections on June 25th. (An election had also been held in British Columbia in August, with Mr. Bennett being returned to power.) As with the earlier open Conferences, a number of observers invited by the various governments were also in attendance. During the week preceding the Conference, the federal working paper "Income Security and Social Services" had been released. During the Conference the agenda, a Secretariat Briefing Paper on constitutional review activities and discussions within the Continuing Committee, the Progress Reports of the three ministerial committees that had held a second meeting, and an additional Briefing Paper on discussions within the Committee of Ministers on Fundamental Rights would also be made public.

It had been planned that the first day of the Conference would be devoted to an examination of the distribution of powers, specifically, income security and social services. However, in spite of an earlier understanding to the contrary, most of this time was to be used for general statements. The federal government's brief introduction to the distribution of powers was followed by a Quebec statement analyzing the federal proposals and clarifying the Province's position. Most other provinces also felt that they should make some general remarks in reply and Premier Schreyer, as a new leader, took the opportunity to

review his government's position on all aspects of the constitutional review.

Discussions on income security and social services were carried over to Tuesday morning, following which the spending power question was taken up and continued in the afternoon. Taxation and a constitutional obligation with respect to regional disparities were also discussed on Tuesday afternoon. At the end of the afternoon session the Continuing Committee was convened to examine a preliminary draft of conclusions for later issue by the Conference. On Wednesday morning the Conference met for approximately one hour to receive the progress reports of the ministerial committees, none of which gave rise to any discussion of substance. The First Ministers then retired to a private executive session accompanied by the Secretary, to discuss their future programme of work and approve the Conclusions (see Appendix B). The plenary session reconvened later in the morning so that the Chairman could announce the plans which had been made for a non-constitutional conference in February 1970 and for another working session of the Constitutional Conference the following June. The meeting was then declared adjourned.

Entertainment during this Conference was somewhat more limited than in the past. Monday evening, following the now usual after-session cocktail reception for all participants, the Premiers attended the Prime Minister's dinner at 24 Sussex, while other ministers joined the federal Minister of Justice for dinner at the RCMP Officers Mess in Rockcliffe. There were no other social events during the Conference.

The conclusion of the Conference in December 1969 marked the end of the most intensive period in the constitutional review. Between February and December 1969, the First Ministers had met three times, the Continuing Committee of Officials four times, and three of the four ministerial committees had met twice (the Committee of Ministers on the Senate met only once). In addition, the Sub-Committee on Official Languages had met twice and the special Sub-Committees on Sales Taxes and Death Duties once. Appendix D illustrates this most graphically.

There is no doubt that the First Ministers felt they could keep up the pace they had set since they met again, as planned, on February 16 and 17, 1970,

to discuss non-constitutional matters. This meeting is not part of the constitutional series and is not reported here, although it was also served by the Secretariat of the Constitutional Conference by agreement of the First Ministers.

D. The Second Working Session of the Constitutional Conference (No. 5)

Plans for a second working session in June 1970 and a fourth open meeting of the Conference in the autumn were announced in the conclusions of the meeting in December 1969. However, ultimately only one meeting would take place, on September 14 and 15, 1970. Prior to the selection of these dates it had been proposed that the meeting might be held on June 15 to 17, and later on July 6, 7 and 8. The last two proposals were to be abandoned however in view of Premier Bertrand's intention to attend the World's Fair in Japan in June and speculation concerning an election in his province. As for July, this was to prove inappropriate in view of a Royal Visit which had been scheduled for Manitoba early in the month as part of the province's centennial celebrations. It had also been indicated by some Premiers that they preferred not to attend conferences in the summer other than the annual Premiers' Conference.

This second working session of the Constitutional Conference was to be preceded by some political activity at the provincial level. The election speculations in Quebec materialized in the form of an April poll and the election of a new Quebec government under Mr. Robert Bourassa. Elections were also held in Prince Edward Island in May with no change of government, and were called for October in both New Brunswick and Nova Scotia.

The various committees of officials were also busy during this time. The Continuing Committee held its 10th, 11th and 12th meetings, preparing reports and examining papers on the constitutional review process, environmental management and economic growth with emphasis in the latter case, on capital markets and financial institutions. The Sub-Committee on Sales Taxes met for a second time while the Sub-Committee on Death Duties met twice more. For its part, the Committee of Ministers on Official Languages

held its third meeting, while the newly created Sub-Committee on Fundamental Rights held four meetings between February and September (see Appendix D).

The opening of the second working session of the Constitutional Conference behind the closed doors of the main hall of the Conference Centre on Monday, September 14th, was to give rise to a letter of protest addressed by representatives of the media to the Secretary regarding the arrangements which had been made for excluding the press from the Conference room. This difficulty was solved however when on the second day First Ministers decided to permit the press to enter the Conference room at the beginning and end of each session. The discussions on Monday morning and during part of the afternoon were spent on the constitutional review process and environmental management. During the evening, the Premiers attended the now usual dinner for First Ministers at 24 Sussex, while other ministers were the dinner guests of the federal Minister of Justice at the Country Club on the outskirts of Ottawa.

The discussions on Tuesday morning were devoted almost exclusively to the subjects of capital markets and financial institutions. In the final hour before the mid-day break, consideration was given to the report of the Committee of Ministers on Official Languages and the report of the Continuing Committee on the two questions of sales taxes and death duties. Tuesday afternoon began with a look at two C.C.O. reports, one concerning a constitutional obligation to reduce regional disparities, and the other on paramountcy as applied to public retirement insurance. This was followed by a discussion of future Conference plans and of the work programme arising out of private discussions held during the Monday evening dinner at 24 Sussex. There was then a brief adjournment of the Conference so that the Secretariat could complete the drafting of the conclusions. These were subsequently reviewed by the First Ministers, then released (see Appendix B).

The Conference discussions on the constitutional review process, which had been based on a detailed working paper prepared by the Secretariat, gave rise to some agreements which would affect significantly the future conduct of the constitutional review. The conclusions record that First Ministers agreed that the review was basically a political

process and that in addition to further meetings of the Conference, there should be ample opportunity for consultations between individual governments to examine specific constitutional questions, a procedure which was to gain importance in the next stage of the review. While examining the comprehensive versus the partial approach to the review, a number of Premiers also expressed the view that some urgent amendments might be required before completion of the full review and that it would therefore be important to have an appropriate method of making such amendments. In this connection, it was therefore agreed that individual provinces should submit specific proposals for an amending formula to the federal Minister of Justice, after which it could be decided whether it would be worthwhile to discuss the subject further at the next meeting of the Conference in February 1971. The Secretariat would not be involved in this latter process, although it would be kept informed. The Continuing Committee was also asked to carry out a detailed investigation of ways of amending the constitution.

During these Conference discussions, two other important questions had also been raised. The first was the relationship of the amending formula to the question of the patriation of the constitution; the second concerned the exploration of the possibility of identifying a number of subjects on which sufficient agreement had been reached so that they might be incorporated in the existing constitution using a new amending formula. This particular discussion was to lead to the notion of a limited "package" of agreements illustrating the constitutional progress that had so far been achieved.

It should be noted that following their second working session, the First Ministers continued to meet for a third day, on September 16th, to carry on discussions on non-constitutional matters regarding which a separate statement of conclusions was later issued.

E. The Third Working Session of the
Constitutional Conference (No. 6)

It was only a short month after the September meeting that Canada was shaken by what is now referred

to as the F.L.Q. crisis or "la crise d'octobre". Perhaps because of their particular timing, these events had little effect on the constitutional review. The only exception was the Committee of Ministers on Fundamental Rights which decided to cancel its third meeting, since it was felt that it would not be politic for Attorneys General to meet to discuss political rights while the War Measures Act was still in force. There was, however, a marked increase in the security measures surrounding the heads of government, in particular the leaders in Ottawa and Quebec.

The October elections in the Maritimes took place as planned producing changes in both provinces, with Mr. Gerald Regan taking over from Mr. Smith in Nova Scotia, and Mr. Richard Hatfield replacing Mr. Robichaud in New Brunswick. A few months later, Premier John Robarts announced his own intention to retire as Prime Minister of Ontario, with the result that the forthcoming meeting of the Conference in February would be his last.

Despite the upheavals of the autumn of 1970, plans for the third working session proceeded uninterrupted. By the end of the year the dates of February 8 and 9 had been confirmed and an agenda proposed. The Continuing Committee held its 13th meeting in late November and its 14th and final meeting in January of the new year. At these meetings, the Committee began an examination of the mechanisms of federal-provincial relations, patriation of the constitution and an amending formula as had been requested in September; these discussions were reported to the Conference by way of a Secretariat Briefing Paper. It was at the 13th meeting of the Committee that the Quebec representative reiterated his government's desire to give priority to the question of social policy.

While the C.C.O. was carrying out an essentially exploratory examination of patriation and an amending formula, bilateral negotiations had already begun between the federal Minister of Justice and the heads of the provincial governments. During the month of January, Mr. Turner visited nearly all the provincial capitals to examine the possibility of achieving agreement on a limited "package" of constitutional reforms that would permit early and positive progress to be achieved. The "package" consisted of eight

items - patriation, an amending formula, fundamental rights including language rights, the Supreme Court, external relations, regional disparities, mechanisms of intergovernmental relations, and a new title for the constitution, a new preamble and general modernization. On some of these items, Mr. Turner was able to discuss draft texts, which had been prepared by the federal Department of Justice.

On February 2, the Secretary telegraphed a revised agenda to all delegations in which the subjects of capital markets and financial institutions had been removed and, at Quebec's request, social policy added. In response to other requests, two non-constitutional issues, unemployment and transportation to northern resources had also been inscribed. The Secretary also took the opportunity to transmit Mr. Trudeau's proposal to meet all Premiers in an informal session over supper at 24 Sussex, on the Sunday evening preceding the opening of the Conference.

The third closed session of the Constitutional Conference met on Monday, February 8th. Eight of the Premiers had been able to attend the Prime Minister's previous informal meeting where the "package" of constitutional changes had been discussed multilaterally for the first time. The absence of two Premiers however was considered sufficiently serious for the Conference to decide on Monday morning, once the opening formalities had been dispensed with and the two new members, Messrs. Regan and Hatfield, had made brief statements, that it should reconvene in private executive session so that Premiers Bennett and Strom could be briefed on what had been discussed on Sunday evening by their colleagues. Although he had not attended the discussions on Sunday, the Secretary was also present at this executive session and prepared private notes for the First Ministers. On Monday afternoon the Conference met again in full assembly to discuss the "package" of proposed constitutional changes. It was reported that the executive session had resulted in a consensus with respect to patriation and an amending formula, following which the full assembly then spent two hours discussing the other six items of the package. At 4:30 p.m. the group turned its attention to Quebec proposals on social policy presented by the Hon. Claude Castonguay. That evening all participants attended a reception given by the Governor General and Mrs. Michener at Rideau Hall, after which the Premiers

went on to dinner at 24 Sussex while other ministers dined with the federal Minister of Justice in the Confederation Room of the West Block.

On reconvening on Tuesday morning the First Ministers continued their discussions on a package of reforms, this time by way of draft conclusions which had been prepared by the Secretariat on the basis of the Monday discussions. Although the examination of these specific texts gave rise to fresh debate on a number of items, by 1:00 p.m. progress had been such that it was agreed to forego lunch and to continue without a break. The question of unemployment followed, then a discussion on the "chicken and egg war" in the framework of the agenda item on the Canadian Common Market. By mid-afternoon the First Ministers were ready to turn to the question of environmental management and pollution. By this time, however, Premiers Bennett and Strom had left the Conference room, Premier Bennett having already tabled a statement regarding pollution. All other Premiers were able to remain to the end, arrangements having been made to fly them home by special plane. At 4:30 Tuesday afternoon the Conference began its examination of the final draft of conclusions incorporating the "elements" of the proposed constitutional changes. Quebec and Ottawa, which had been negotiating bilaterally during the meeting, reported that they had been unable to reach any agreement on external relations and the item was dropped from the conclusions which were subsequently issued following the adjournment of the meeting (see Appendix B).

The key result of this third working session was the agreement to proceed as quickly as possible to patriate the constitution with an appropriate amending formula, and other changes on which First Ministers could agree, with a minimum of delay. The Conference conclusions reflected a new sense of urgency. To reach their goal of final agreement in June, First Ministers had also decided that the bilateral approach which had been used between September 1970 and February 1971 should be emphasized, with the Continuing Committee being called on as required. In this connection, it was agreed that the federal Department of Justice would prepare draft constitutional texts covering the proposed constitutional changes, and that these would be sent to all provinces prior to visits by a federal team during which the texts would be discussed further.

It was hoped that these bilateral consultations would result in the development of an acceptable consensus on the draft constitutional texts. If necessary, an informal meeting of First Ministers or of Ministers of Justice might be held to resolve any outstanding difficulties. No role was specified for the C.C.O. in this drive to agree on a "package" by June.

At this Conference, Mr. Bourassa had also made it clear that he considered a solution to the social policy question would greatly facilitate a successful agreement on the other items of constitutional change in the package. In this connection, the meeting was informed that bilateral discussions involving ministers and officials were planned and that a meeting of Welfare Ministers was scheduled for the autumn. The First Ministers asked that this work be accelerated and that the Welfare Ministers meet earlier so that they could report to the Constitutional Conference planned for June in Victoria.

F. The Preparations for Victoria

Immediately following the third working session the officials of the federal Department of Justice began the task of translating the elements of the February "package" into draft constitutional texts which would serve as the basis for further consultations before the meeting in Victoria. In mid-March, the Secretariat received and circulated to the provinces draft texts dealing with four of the items raised in February.

While this drafting work was being carried out, the Chairman wrote to his provincial colleagues on March 3, 1971, suggesting a number of steps as follows:

First, I believe that there would be some value in having a small working group of officials, perhaps those who will be involved from this point onward in the drafting of provisions as agreed upon, take a preliminary look at the draft material. This would not be for discussion of the substance of positions, but rather to permit questions to be raised and to enable federal officials to explain the

reasoning behind the choice of language in the drafts and other things of that kind. The officials would then be in a position to brief their respective Premiers and Ministers prior to bilateral discussions. I think in that way, misunderstandings might be avoided or removed and the bilateral discussions might be made more fruitful. If this approach is generally agreed on, I will ask Mr. Gordon Robertson to arrange such a meeting near the end of March. In order that he may do so, if it is agreed, it would be helpful if you could let me know whom he should contact.

As a second step, bilateral discussions could follow during the month of April, when a federal team might visit provincial capitals (as was done in January) to ascertain the reactions of governments to the draft material.

We would then have the month of May to work out any adjustments in the proposed constitutional texts which may prove to be appropriate in the light of the bilateral consultations. If it proved to be desirable, we could also arrange a meeting of Ministers, in that period, to have some multilateral discussion of the proposed texts. Whether this would in fact be needed can be considered later as we see the result of the preceding discussions. I would suggest that our objective should be to reach general agreement before June on specific texts that we can discuss finally and, I hope, approve at the Victoria Conference.

At the same time as this process is going on, of course, we will be having separate consultations concerning the matter of social policy.

This approach was approved by all governments by return correspondence. In its reply however, Ontario took the opportunity to protest the exclusion of the Continuing Committee of Officials from the procedure foreseen and strongly urged its restoration. In this connection it may be interesting to note that in spite of the conclusions of the February Conference which stated that work on other aspects of the constitutional review would continue while the draft

constitutional texts were being considered, no specific mandates to this end were given by the First Ministers, and all other work was in fact suspended after the February meeting. The Sub-Committee on Official Languages met on April 5 and 6 to discuss the implementation of current programme proposals, but no other regular committees, including the C.C.O. met again in the months between February and June. When the "small working group of officials" mentioned in the March 3rd letter met on March 29 the Chairman was careful to point out that it was not to be considered a meeting of the C.C.O.

With the exception of Mr. Claude Morin of Quebec who that day was attending a meeting on social policy between Messrs. Castonguay and Munro, the provinces attending this meeting of officials on March 29 chose to be represented by either their principal delegate to the Continuing Committee or other members of their C.C.O. delegations, despite the suggestion that had been made for the selection of a different group of officials. Newfoundland and Prince Edward Island were unable to send officials to the meeting but did express their views to the federal representatives. This "ad hoc" group of officials was given the opportunity to discuss the draft constitutional provisions which had been sent to the provinces during March, as well as texts of a preamble and an amending formula. Although this was essentially a briefing session, a number of concerns were expressed which the federal delegates indicated they would examine.

This meeting of officials was followed by a round of bilateral discussions by a federal team led by the Minister of Justice, Mr. Turner. In the month following Easter, Mr. Turner visited all the Premiers to discuss with them the ten draft texts which had been circulated by the Secretariat during March, April and early May. Then, on May 18, Mr. Turner sent to all the Premiers a revised and consolidated text,

...presented in the form of a "Canadian Constitutional Charter". We think that some name like this would be appropriate, both to indicate the character and importance of the document and also to make it capable of easy reference if, as we hope, it ultimately takes its place in the history of this country.

By this time, it had been agreed, in response to a proposal by Ontario, that a meeting of federal and provincial ministers should take place on May 31. The main purpose of the meeting would be to review in a final way the draft texts of the constitutional changes and, as the Prime Minister expressed it in his letter of April 30, to "resolve as many of the remaining questions as possible, thus narrowing the issues requiring resolution by first ministers in Victoria". He therefore suggested that the designated ministers be given as much direction as possible as to the negotiability of various matters, so that their meeting could serve as a means for accommodating differences in positions.

The holding of this meeting became public knowledge on May 21, when it was announced by the federal government in the following terms:

The meeting of Ministers, under the chairmanship of the Minister of Justice, the Hon. John Turner, follows a round of bilateral discussions which have been held since the Working Session... last February. The purpose of the meeting is to review draft proposals, pursuant to the Conclusions of the Working Session, which are to be submitted for the consideration of First Ministers... in Victoria.

When the ministers met they examined a draft constitutional charter comprising a preamble and ten "Parts" divided into 56 articles. They also looked at the question of the patriation of the constitution and the subject of social policy by way of a proposed text from Quebec to revise the present Article 94A of the B.N.A. Act. Most delegations were led by their Minister of Justice or Attorney General, although Prince Edward Island was represented by the Minister of Health and Welfare and the Quebec delegation was headed by Premier Bourassa who was also Minister of Intergovernmental Affairs at the time. Although this high-power group did resolve a number of points, others were "reserved for the attention of First Ministers". These latter included international relations, some language rights, some points on the Supreme Court and the Courts of Canada, and three alternative draft preambles.

On the matter of modernization, the ministers did not examine the Schedule attached to the draft

Charter for the purpose of tidying up the existing constitutional texts; instead it was agreed that individual delegations would send their comments to the Secretariat so that they could be collated before the Victoria Conference, and examined by officials during the Conference prior to their discussion by First Ministers.

With respect to patriation, Mr. Turner reported that he had been to London to consult with the British authorities concerning the procedures for patriating the constitution. He said that in making this trip, he had made no assumption of agreement in Victoria, but he had thought it desirable to clarify what the procedure should be, in the event that agreement was achieved. The ministers also looked at the text of a resolution which could be passed by Parliament and the provincial legislatures for the purpose of formally patriating the revised constitution in the event that agreement was reached in Victoria.

The constitutional aspects of social policy were also extensively discussed by the ministers, with the understanding that current proposals would be considered by Welfare Ministers at their meeting on June 7 and 8. The federal representatives expressed surprise at the scope of the Quebec proposal presented to the ministers regarding section 94A (see Chapter 6 for elaboration), suggesting that during the bilateral discussions, it had been understood that only family allowances would be added to this article. A number of provinces as well as the federal government expressed strong reservations regarding the proposal and it was agreed that the matter should be examined again by the First Ministers in Victoria. These discussions, as well as Quebec's position that it was not prepared to say whether it could accept the amending formula without some progress in the area of social policy, were a warning concerning the difficulties that might later be experienced in Victoria.

The ministers' meeting concluded with the approval and release of a routine communiqué. Three days later a revised draft Charter was transmitted by the Secretariat to all delegations reflecting the changes that had been agreed to by the ministers and indicating the various reservations which had been expressed on certain provisions. Short explanatory notes on both the text and the reservations were also included.

With ten days to go until the Victoria Conference, only two other matters remained outstanding: the Secretariat collation of comments on the Modernization Schedule, and the Welfare Ministers' meeting. With respect to the Schedule, a number of comments would be received and put together by the Secretariat for the meeting of officials expected in Victoria. The Welfare Ministers met as planned on June 7th and 8th, preparing a report for the First Ministers which was sent on the 8th. Although this report dealt essentially with current aspects of the social policy question it also mentioned that Quebec had submitted a revised draft constitutional text covering Article 94A to the Welfare Ministers and that the province had reiterated its position that an agreement on constitutional change in the area of social policy was a prerequisite to future discussions on the subject of income security. The Welfare Ministers had agreed to report more extensively to their First Ministers individually concerning these constitutional matters. There was another development when, on June 11, a text explaining Quebec's constitutional position on social policy was telexed to Ottawa and the other provinces.

It was said earlier in this chapter that 1969 was the most active year in the constitutional review. The intensity of the preparations for the Victoria Conference during the first half of 1971 had been of a similar order, with every tool of federal-provincial consultation being used. Yet, despite the apparent neatness of the constitutional "package" which had been prepared, optimism as to the possibilities of agreement at Victoria continued to be guarded.

G. The Constitutional Conference in Victoria (No. 7)

The First Ministers had known since the September 1970 working session that they would meet in Victoria in June 1971, a decision which they had subsequently confirmed at their February 1971 meeting when they had agreed on the dates of June 14, 15 and 16. The work which went into preparing the substance of the only Constitutional Conference held outside Ottawa has been outlined in the preceding section; throughout these months, the First Ministers were kept informed of progress by the federal Minister of Justice and by way of the Secretariat.

One event, unique and unprecedented in the constitutional review, took place in the month of April when the Legislature of Prince Edward Island passed a resolution approving the conclusions of the February 1971 working session as a basis for constitutional change. Although the constitutional review had been the subject of debate in a number of legislatures, this was the only occasion during this time that a legislature would be called upon to take any position in regard to the substance of the review.

In general, the political scene in Canada remained basically tranquil. In Ontario Mr. Davis took over from Mr. Robarts following a provincial Conservative leadership convention. Premier Thatcher called an election in Saskatchewan for June 23 and on June 2 asked, unavailingly, whether it would be possible to postpone the Victoria Conference until after that date.

There was an air of anticipation as staff support, delegates and the media representatives began to arrive in Victoria shortly before Monday, the 14th of June. There were a number of familiar faces from the Ottawa Press Gallery as well as political commentators and CBC television crews who had made the trip despite the fact that there had been no decision as to how much of the Conference would be open. Not so identifiable, but ever present, were the security officers who blanketed an Empress Hotel full of politicians and mandarins.

The agenda of the Conference had been announced on the 7th of June and it was now public knowledge

that Mr. Trudeau had invited his provincial colleagues to dinner in his hotel suite on Sunday evening, the 13th. All First Ministers accepted the invitation except Mr. Thatcher, who had chosen to remain on the hustings and who was replaced by his Attorney General, Mr. Heald. From remarks made later at the Conference, it seems some time was spent that evening discussing the general procedure to be followed during the Conference, the decision being made to tackle the less difficult parts of the Charter first and to reserve Tuesday afternoon for the social policy question.

The opening of the Conference on Monday morning, June 14th, was largely ceremonial in character. It was preceded by a motorcade of Prime Ministers and Premiers, seated in open convertibles in the order of their entry into Confederation, through the streets of downtown Victoria to the Parliament Buildings. The first session of the Conference was then opened in the British Columbia Assembly Chamber with televised opening statements honoring British Columbia on the occasion of its Centennial and dealing, generally, with the objectives and aspirations of the Conference. For this, the only open session of the Conference, and for the closed portions which were to follow as well, the seating plan of delegations had been adjusted so that British Columbia, as host delegation, could be located to the immediate right of the Chairman. Other delegations on the right were moved down one place from their regular order, an arrangement cleared in advance with those affected. Alberta, usually positioned at the lower right, was moved across to the left side of the horseshoe to the right of Newfoundland. At the close of the morning's round of speeches, First Ministers were asked to walk back to the Empress Hotel through a gathering of British Columbia citizens who had dressed in the styles of the previous century. This was followed by a luncheon for all participants and selected members of the press, offered by the British Columbia government and presided over by Premier Bennett.

On Monday afternoon the Conference reconvened in camera. Before proceeding with the agenda, Premier Davis of Ontario, as a new member, was given the opportunity to make a general statement on his government's position regarding the constitutional review. The Conference then moved on to an examination and approval of draft texts in the Charter regarding

the subjects of political rights*, provinces and territories, federal-provincial consultation, regional disparities, and of the separate resolution on patriation. The amending formula and official languages were also discussed but a number of points remained unresolved on both items and the federal Minister of Justice invited interested delegations to remain at the close of the afternoon session to consult with him on possible solutions. Following Monday's adjournment, a meeting of officials from all delegations was held to deal with the two questions of the preamble and the modernization of the constitution, as had been proposed during the meeting of ministers on May 31st. That evening the Lieutenant Governor of British Columbia, the Hon. John Nicholson, entertained First Ministers and ministers at dinner at Government House.

The morning session on Tuesday was preceded by a briefing on social policy by the Quebec Minister of Social Affairs, Mr. Claude Castonguay. This was an informal meeting which the Secretariat had been asked to organize, following the discussions at the Welfare Ministers' meeting on June 8th, so that Mr. Castonguay could explain his government's position on social policy and answer questions from delegations. The Tuesday morning Conference session was devoted almost exclusively to a discussion on the Supreme Court of Canada. However, after two and one half hours of discussions, it was agreed, at Ontario's suggestion and in view of the points which remained to be settled, that the Attorneys General should meet separately during the afternoon to continue discussing the subject. Just before lunch, Mr. Turner reported to the Conference on the discussion he had had with interested delegations late Monday afternoon and a number of items, though not language rights, were settled.

* Discussions on this item marked the introduction of the concept of "reluctant agreement" whereby delegations which did not wholly approve of a specific text could nonetheless express their agreement under the reservation that agreement would have to be reached on the total Charter.

As planned, social policy was the first item on the agenda Tuesday afternoon. Debate focused on possible draft amendments to section 94A submitted by Quebec and on a federal text circulated for the first time on Tuesday morning. After two hours of discussions which failed to produce agreement, the session was adjourned. The First Ministers then continued their negotiations in a private executive session, where an attempt was made to make progress on the question of language rights, including an agreement whereby provinces might delay for a few days their decision to opt in to certain language clauses in the Charter. It is not clear whether there was any discussion regarding the process which would be required to approve the Charter during this private meeting.

All negotiations, though perhaps not the lobbying, were suspended on Tuesday evening, when all participants and their spouses and selected representatives of the media were the guests of the Government of British Columbia on a cruise and dinner aboard the flagship of the B.C. Ferries.

Wednesday morning, the Attorneys General had not completed their tasks and continued to meet separately. In their absence First Ministers took up again the question of language rights for an hour and international relations for the next hour. At noon, the Attorneys General returned, with the federal Minister of Justice reporting some progress on the remaining issues regarding the Supreme Court and suggesting a further meeting of Attorneys General to complete the discussions. The two questions of the preamble and the modernization of the constitution had also been referred earlier to the Attorneys General following the meeting of officials on these subjects on Monday. At noon on Wednesday, Mr. Turner also reported that the Attorneys General had been unable to agree on a text for a preamble to the constitution. As for the question of modernization, the ministers had agreed to recommend that First Ministers should approve in principle those Charter articles dealing with modernization of the constitution as well as the Schedule of repeals which was attached. This last recommendation was accepted by the First Ministers who also agreed that immediately following the Conference there should be a review of the contents of the Schedule by officials of interested governments;

for this purpose, it was agreed that submissions regarding the deletion of provisions from column 2 of the Schedule would be received by the Secretariat until June 23rd, and that no submissions of substance would be entertained.

In keeping with their earlier decision, the First Ministers then retired to the Government Caucus Room to have a working lunch, following which it was expected that the final session of the Conference would reconvene as usual at 2:30. However, the First Ministers were to remain closeted in private session until 6:00 p.m. that afternoon. The Secretary was asked to join their private meeting after lunch and later the Attorneys General were also called in. It must be assumed that it was during this five-hour private meeting that the procedure and deadline for accepting the Charter were agreed by the First Ministers. This latter decision is reflected in the conclusions for the Conference, however the choice of and reason for a June 28th deadline for the acceptance of the Charter by governments was not discussed in the full Conference.

When the plenary session reconvened at 6:00 p.m. it was decided that a committee of verification ought to be formed to ensure that the revised texts in the Charter conformed to the agreements which had been reached during the three days of negotiations. This group would meet after the close of the final session but prior to the final printing of the Charter document. Mr. Turner then reported to the Conference regarding the further discussions the Attorneys General had had on the Supreme Court and said they could not report progress on the question of the nominating procedure for judges. In the hour which followed, the First Ministers completed their discussions on language rights, the preamble, social policy and international relations. At 7:40 they took up the question of the Supreme Court nominating procedure which was finally settled after another hour of negotiations. There was then a short discussion on whether governments could accept the Charter in part, but it was agreed that it would have to be accepted as a whole within the deadline. It was understood that the consequence of agreement by governments was that Parliament and the provincial Legislative Assemblies would likewise be expected to accept the Charter in toto. At 9:00 p.m. Wednesday evening, the Conference began its examination of the statement

of conclusions. After a short break during which Quebec examined a revised French text, the final version was approved at 11:15 p.m. and released to the press (see Appendix B). Short statements of thanks to Premier Bennett and his government for their hospitality then followed, and the Conference finally adjourned at 11:30 p.m.

Thus ended the longest single uninterrupted discussion in the course of the constitutional review, with the First Ministers having spent 13 non-stop hours together that day. The Conference adjournment would be followed by a lengthy press conference given by the Prime Minister of Canada and by the meeting of the committee of verification from 1:00 a.m. to 3:30 a.m. on Thursday the 17th. Once this last verification of what had become the "Canadian Constitutional Charter, 1971", had been achieved, copies would be made and distributed to delegates and the press at 8:00 a.m. on Thursday morning (for final text of Charter, see Appendix B).

H. The Post-Victoria Situation

(1) The suspension of the constitutional review

The agreement reached at Victoria provided that the proposed "Canadian Constitutional Charter, 1971", should be reported to all eleven governments for consideration and that if its acceptance as a whole was communicated to the Secretary of the Constitutional Conference by June 28, governments would then take the further step of recommending the Charter to their respective Legislative Assemblies or Parliament. Approval of the uniform resolution for patriation and of the Charter by all the Legislative Assemblies and Parliament would in turn open the way for action to be taken both here and in the United Kingdom leading to patriation of the constitution and the coming into force of the provisions of the Charter.

By June 28, all governments except Quebec and Saskatchewan had advised the Secretary that the Charter was acceptable. Quebec informed the Secretary on June 23 that it could not recommend the Charter to its National Assembly because the clauses dealing

with income security (articles 44-45 in the Charter) allowed for a degree of uncertainty which was not in keeping with the objectives of constitutional review. Coupled with this rejection was the qualification that Quebec's answer could be different if the uncertainty mentioned was removed. In the case of Saskatchewan an election had been held on June 23rd resulting in a change of government; it was therefore agreed with the then Premier-designate, Mr. Blakeney, to extend the deadline for acceptance of the Charter by that province until a new Saskatchewan Cabinet had had time to discuss the document. However, so far no position has been reported by Saskatchewan.

For a time, although the June 28th deadline had passed, it appeared that action might be taken to remove the "uncertainty" referred to by Quebec with the Conference Chairman suggesting that he would be prepared to submit to all governments any new proposal that the province might have regarding articles 44 and 45 of the Charter. However, time passed without any such proposal coming forth. As the federal government had already declared that it did not foresee other immediate meetings of the Constitutional Conference unless Quebec could provide the initiative for solving the impasse, the eventual result of Quebec's veto would be to arrest action for patriating the constitution and to halt the process of constitutional review.

A further inconclusive footnote was to follow, however. On September 2, Mr. Bourassa wrote to the Prime Minister of Canada confirming the failure to reach agreement on the constitutional aspects of the social policy question, but suggesting that a solution at the legislative level might be reached so as to remove any conflicts in the proposed Quebec and federal legislation regarding family allowances. This could be done by certain amendments to proposed federal legislation. Mr. Trudeau replied on the 17th that an approach at the legislative and administrative levels might indeed circumvent the constitutional difficulties and suggested that Quebec and federal representatives should meet as soon as possible to discuss the question further. He added that an agreement along these lines might help to remove the "uncertainty" which Mr. Bourassa had referred to in June with respect to the social policy articles in the Victoria Charter.

On March 9, 1972, Mr. Trudeau wrote to both Quebec and the other provinces, proposing changes in the application of the federal Family Income Security Plan whereby, for provinces wishing to ensure an integrated system of allowances within the province, the federal scheme, within certain limits related to national standards, could be modified to accord with the standards of the provincial scheme. It was also indicated that while an integration of schemes could be brought about initially by federal-provincial agreement, the federal government was prepared to contemplate a constitutional amendment if this seemed desirable. Moreover, if a satisfactory constitutional basis could be found, and if it solved the problem of social security which remained to be cleared up to permit further progress in the process of constitutional review, the federal government was prepared to consider the extension of the principle of the present proposal to other income support programmes. While responses to this latest proposal are awaited, any further action on the Victoria Charter remains suspended.

In this connection it might be added that should the Charter ever be proceeded with it would now be necessary to attend to certain additional related questions which have arisen since its acceptance in Victoria. These include points raised by the committee of verification on June 17, follow-up action on the Schedule to Part X of the Charter as well as Premier Schreyer's request, likely to be echoed by other First Ministers, that his province would have further comments should any point of substance in the Charter be re-opened for negotiation. It should also be recalled that as of this date one provincial government has changed since its predecessor gave its approval to the Charter.

As for the Secretariat of the Constitutional Conference, the suspension of the constitutional revision has led to the re-assignment of its staff to other positions except for the Secretary who, for the time being, continues to remain in his official position.

(2) The Final Report of the Special Joint Committee
of the Senate and of the House of Commons on
the Constitution of Canada

During the winter of 1969 the federal government decided it would be opportune to establish a parliamentary committee on the constitutional review. By resolutions passed in the House of Commons and the Senate on January 28 and February 17, 1970, respectively, a Special Joint Committee was appointed "to examine and report upon proposals, made public, or which are from time to time made public by the Government of Canada, on a number of subjects related to the Constitution of Canada during the course of the comprehensive review of the Constitution of Canada... and alternative proposals on the same subjects..." Although ten Senators and twenty members of the House of Commons were listed as being on the Committee, some twelve other Senators and 52 other Members of Parliament were involved in the work of the Committee during its two years of activity. The Final Report of this Committee was tabled on Thursday, March 16, 1972, nine months after the conclusion of the Victoria Conference. The Report recognizes that actual constitutional changes will likely come about as a result of intergovernmental negotiations, but expresses the hope that its recommendations will be taken into account.

While the recommendations of the Joint Committee cover a wider range of subjects, a number of them are directly in support of or in reference to the Victoria Charter as well as the conclusions of earlier Constitutional Conferences, particularly that of February 1971. Among the recommendations dealing with subjects that are not included in the Charter but which were examined by the Parliamentary Committee are those on a preamble for a revised constitution, the distribution of powers, in particular the taxing and spending powers, economic policy, international relations, and pollution.

PART II

THE CONSTITUTIONAL REVIEW - AN ANALYSIS
OF THE WORK ACCOMPLISHED

Chapter 3 - The Structures Established for the Constitutional Review

This chapter discusses the structures which were established for carrying out the constitutional review, in accordance with the requirements of any large-scale study. These, as well as the work techniques used, were subject to a continuous evolution and First Ministers experimented with several formulas. The review structures consisted essentially of the various committees created for the purpose of intergovernmental discussions, and which will be described in the following order: the Constitutional Conference, including the working sessions and private meetings; the Continuing Committee of Officials; the sub-committees; the committees of ministers; and the ad hoc meetings, under which heading bilateral consultations and other non-structured meetings will be described. A brief description of the administrative machinery underlying the constitutional review, the Secretariat of the Constitutional Conference formed in 1968, will conclude this examination. The general criteria used in the description of these committees are origin, terms of reference, answerability and number and frequency of their meetings. A list of participants in the meetings at all levels is appended, as well as a list of the dates and places of these meetings (see Appendices C and D).

A. The Constitutional Conference

At their first constitutional meeting in February 1968, the federal and provincial First Ministers decided to form a permanent body. As a result of this meeting, it was agreed

That a continuing Constitutional Conference be set up, composed of the Prime Ministers and Premiers or their delegates, to supervise the process of constitutional review; ...

In the light of the foregoing, it is therefore clear that it was from the outset the intention of the First Ministers to "supervise the process" and thus to conduct the constitutional review as a basically political exercise. The First Ministers were to reaffirm their intention to carry the task to a successful conclusion at their meetings in February 1969 and September 1970. At the latter meeting the First Ministers also recognized the requirement that concurrently they should continue to deal with current problems. The Constitutional Conference's terms of reference are contained in the conclusions of the February 1968 Conference. Without limiting the terms of reference these conclusions identified seven main questions on which the First Ministers should concentrate:

- a) official languages;
- b) fundamental rights;
- c) distribution of powers;
- d) reform of institutions linked with federalism, including the Senate and the Supreme Court of Canada;
- e) regional disparities;
- f) amending procedure and provisional arrangements;
- g) mechanisms of federal-provincial relations.

The discussions in each of these seven areas which form the framework of the constitutional review will be described in subsequent chapters. It will be noted here that the above topics were proposed in this form by the late Daniel Johnson, then Premier of Quebec, except for the seventh, "mechanisms of federal-provincial relations", which was suggested by John Robarts, the former Premier of Ontario. However, it should be added that these seven headings generally accorded with federal views although the latter might not have been presented in this form.

As for answerability, it was noted above that the Constitutional Conference would "supervise" the review process, which meant that the First Ministers were responsible only to their respective governments. The Constitutional Conference held a total of seven meetings: three open Conferences in February 1968, February 1969 and December 1969; three working sessions in camera in June 1969, September 1970 and February 1971; and finally the Victoria Conference, the first part of which was televised with the remaining sessions held in camera. All Conferences of First Ministers were held in Ottawa except the last one held in Victoria.

The Constitutional Conferences proper were open meetings, wholly or partly televised. The items on the agenda of these meetings were often of a more general nature and therefore better able to capture the interest of the public. The "working sessions", on the other hand, which, according to the conclusions of February 1969, were expected to bring together the First Ministers and members of the Continuing Committee of Officials, were in fact Constitutional Conferences held in camera. The presence of officials at these working sessions merely followed the general practice already established for all Conferences, and so the purpose of these meetings remained the same even though their name was changed. The discussions during the working sessions however were often more technical in nature, and the general atmosphere more relaxed.

B. The Continuing Committee of Officials

Established in February 1968, in the words of the conclusions of the first Conference of First Ministers, "to assist the Constitutional Conference in its task", the Continuing Committee of Officials was one of the essential pillars of the constitutional review. Composed of senior officials and specialists on constitutional questions, the Continuing Committee, by virtue of its seniority, its responsibilities and the frequency of its meetings became the embodiment of the continuity of the review. Its role consisted of making a preliminary study of the subjects submitted to it by the First Ministers, and then reporting to them on the progress made. In addition, the Continuing Committee had full authority to co-ordinate all research undertaken by officials and was responsible for preparing documents for the Conference.

Since the Continuing Committee's responsibility was to support the Conference of First Ministers, its terms of reference were identical to those of the Conference. The Committee therefore also examined the seven major topics listed in the previous section in addition to procedural and methodological questions related to the entire review.

In terms of answerability, the Continuing Committee of Officials was responsible only to the Constitutional Conference, from which it received its instructions. It should be noted however that the Committee had no decision-making powers and was limited in its role to the formulation of recommendations for examination by the First Ministers.

The Continuing Committee of Officials is the constitutional committee which met most often and most regularly, holding a total of fourteen meetings between May 1968 and January 1971. This frequency is attributable to the scope of its terms of reference as well as the obligation, which weighed upon it more than upon any other body, to maintain the momentum of the review process.

C. The Sub-Committees

In general, the sub-committees were fact-finding technical groups working in specialized areas on behalf of either the Continuing Committee of Officials or the committees of ministers. They were mainly composed of experts in the respective areas under study. Their reports were mostly technical in nature and detailed, enumerating the various aspects of a particular question without expressing the opinions of committee members. Occasionally the same expert represented several provinces, and by and large the atmosphere at these meetings was noticeably less political than at meetings at other levels.

The sub-committees fell into two types: those reporting to the Continuing Committee of Officials, such as the Sub-Committees on Sales Taxes and Death Duties and the 1968 Sub-Committee on Official Languages; and those reporting to a committee of ministers, such as the Sub-Committee on Fundamental Rights and the Sub-Committee on Official Languages after February 1969. The sub-committees' work depended on their terms of reference and also on the committee to which they reported. If the terms of reference were very technical and meetings held at frequent intervals, as was the case for the Sub-Committees on Sales Taxes and Death Duties, it was to be expected that the sub-committee studies could be effected rapidly. If, however, the sub-committee's terms of reference included a number of general problems related to the terms of reference of the committee served, as was the case with the Sub-Committees on Fundamental Rights and Official Languages, the sub-committee's task was that much greater.

The origin of the sub-committees goes back to the first two Constitutional Conferences, with the February 1968 decree of the First Ministers

That the Continuing Committee of officials be allowed to set up sub-committees on specific questions; with the approbation of the Prime Ministers;

and with their further directive in February 1969 stating that

the Continuing Committee of Officials is authorized to establish such sub-committees, working groups or task forces as seem to be required for its purpose.

When comparing these two texts, it can be seen that the requirement for prime-ministerial approval of the establishment of sub-committees of the Continuing Committee was removed from the 1969 directive. However, the Continuing Committee of Officials was to continue to seek such approval for any decision taken in this area by means of its reports to the Constitutional Conference. It should be noted in passing that the heterogeneous composition of the Continuing Committee also enabled it to draw on the knowledge of many experts without having to resort to the establishment of additional sub-committees.

Each of the four sub-committees was established with a clearly defined mandate, the broad outlines of which are described here in chronological order.

The Sub-Committee on Official Languages which was formed after the February 1968 meeting was to study the Report of the Royal Commission on Bilingualism and Biculturalism as well as the opinions of each government on this issue. The Sub-Committee was also to consider the question of the recognition of language rights from both the constitutional and non-constitutional standpoints, the latter pertaining specifically to federal aid for bilingualism.

The Sub-Committee on Sales Taxes, set up following the first working session of First Ministers, was to study formulas to ensure that the sales tax would be applied only within each

province. The Sub-Committee on Death Duties, also established at the same time, was to examine the implications of exclusive federal or provincial jurisdiction in this area, as well as those of joint jurisdiction. In addition it was also to examine the correlation between federal legislation on death duties and the Quebec Civil Code.

Finally, the Sub-Committee on Fundamental Rights was established as a result of a decision of the Committee of Ministers on Fundamental Rights at its November 1969 meeting. The purpose of this Sub-Committee was to define the substance and scope of fundamental political rights, to explore the question of the guarantee or protection of rights through federal or provincial legislation and to study the effects of clauses relative to due process.

The Sub-Committees on Official Languages and Fundamental Rights each met five times, the Sub-Committee on Death Duties three times and the Sub-Committee on Sales Taxes twice. The latter two were dissolved after their final reports had been presented to the Continuing Committee in June 1970.

D. The Committees of Ministers

The committees of ministers signalled a new phase in the evolution of the structures of the constitutional review. Having established themselves as a continuing body and set up the Continuing Committee of Officials and the Secretariat (see below), the First Ministers decided, at their second Constitutional Conference in February 1969, to entrust a number of topics to committees of ministers. The First Ministers' intention was to have these issues studied above the official level in order to arrive at positions which would reflect more precisely the policies of their governments and thus facilitate the conclusion of agreements by the Constitutional Conference.

Four committees of ministers were established with mandates to examine the questions of official languages, fundamental rights, the judiciary and the Senate. To these four should also be added the committees of ministers on regional disparities, the tax structure and the national capital region. The last three committees were mentioned by the First Ministers at their February 1969 Conference; however since their terms of reference were basically non-constitutional in character, and since they had no subsequent relationship with the Conference, a more detailed description of these three committees will not be given here.

The terms of reference of the Committee of Ministers on Official Languages included the review of the recommendations of the Royal Commission on Bilingualism and Biculturalism, together with reports on linguistic matters from the Continuing Committee of Officials and the Sub-Committee on Official Languages. The Committee was requested by the First Ministers to consider both the constitutional aspects of linguistic matters and the methods of implementation of language policies, including the nature of possible federal assistance for this purpose.

The Committee of Ministers on Fundamental Rights was to examine all matters relating to fundamental rights, including the entrenchment of such rights in a constitutional charter.

The Committee of Ministers on the Judiciary was to consider certain provisions concerning the Supreme Court and the judiciary taking into account the views and proposals of the various governments.

The terms of reference of the fourth committee, the Committee of Ministers on the Senate, included the examination of constitutional provisions which might be introduced to reform the Upper House.

With respect to the answerability of the committees of ministers, the conclusions of the February 1969 Conference stipulated that "all special committees of ministers set up by the Constitutional Conference should report to the Constitutional Conference".

The Committee of Ministers on Official Languages met three times, the Fundamental Rights and Judiciary Committees twice, and the Committee of Ministers on the Senate once. None of these committees submitted a final report. While premature conclusions are to be avoided, it can nevertheless be stated that, in general, the performance of the committees of ministers did not always meet the initial expectations of the First Ministers expressed in February 1969. These committees did not, for the most part, arrive at any preliminary decisions, but rather often, like the Continuing Committee of Officials, reported the various aspects of each question to the First Ministers so that the latter could then make the decisions which were required.

E. The Ad Hoc Meetings

This section describes the final phase in the evolution of the structures of the constitutional review. The First Ministers, aware of the slow progress made since the start of the review and of the impatience which was becoming apparent in certain governments as well as in the general public, indicated a willingness in September 1970 to attempt to reach a definitive agreement on a limited number of items which could subsequently be translated into constitutional amendments capable of implementation in the near future. This new procedure gave rise to political negotiations by way of bilateral consultations, since this method seemed to offer the best chance of identifying the areas of agreement in order to reach a consensus on a limited number of items.

These bilateral consultations occurred in the course of two series of visits by the federal Minister of Justice, Mr. John Turner, to each of the provincial governments in January and April 1971, and were to result in the preparation of a number of constitutional texts to be examined subsequently by the First Ministers during their meeting in Victoria in June of that year. A meeting of First Ministers in February 1971, as well as two ad hoc

multilateral meetings for the purpose of examining constitutional texts were held during the course of the bilateral consultations. The first multilateral meeting took place in March and was attended by a group of officials; the second was held under the chairmanship of Mr. Turner on May 31st and June 1st and was attended by ministerial representatives of each province with Mr. Bourassa representing Quebec. These discussions resulted in the elaboration by First Ministers, at the June Conference in Victoria, of a Charter bringing together a number of constitutional texts.

The period of feverish activity following the meeting of First Ministers in September 1970 thus brought mixed results. Despite the absence of final agreement on a constitutional charter, the departure which had been made from the established structures of the review process had apparently resulted at this particular stage of the review in an acceleration of negotiations and in the achievement of progress towards substantial agreement.

F. The Secretariat of the Constitutional Conference

This chapter on the structures of the review can be concluded with a brief description of the administrative support apparatus underlying the constitutional review. Formed after the first Constitutional Conference in February 1968, the Secretariat of the Constitutional Conference was an administrative support body entirely at the disposal of the eleven governments and the committees on which they were represented. Its status of neutrality enabled it to prepare meetings, record the discussions held, circulate documents

submitted by delegations, and generally facilitate the administrative task of all governments in their study of the constitution. A more detailed description of the role of the Secretariat during the constitutional review will be found in Chapter 8.

Chapter 4 - The Work of the Continuing Committee of
Officials (C.C.O.) and its Sub-Committees

The choice of the name, "The Continuing Committee of Officials", was particularly apt for this key mechanism in the constitutional review process. While as a body of "officials" the Committee could only play a secondary role in a predominantly political exercise, as a "continuing" committee the C.C.O. was able to provide the essential degree of continuity required throughout the review. The C.C.O. was clearly not just one of many committees. It was the only body, other than the Conference itself, which was concerned not only with the subject matter of the constitutional discussions but also with the actual conduct of the review process. Similarly, while the degree of influence Continuing Committee members wielded within their respective governments may have varied, they were the only governmental representatives for whom the constitutional review was a primary and continuing matter of concern. The C.C.O.'s special position was also evident in its relationship with the Conference, where it not only acted upon the instructions and directions of First Ministers, but was also expected to report to the Conference on various aspects of the review, and to anticipate the requirements of the First Ministers in relation to future discussions.

In this connection, it might be noted that it was assumed from the beginning that the primary method for communicating the results of the Committee's work to the Conference would be through individual briefings of the First Ministers by their respective officials. Though the Committee also presented its own reports to the Conference, the requirement for agreement on precise wording proved cumbersome; for reasons of expediency, the technique of Secretariat briefing papers was therefore adopted, with the Secretary of the Constitutional Conference acting as an intermediary for the purpose of reporting, on behalf of all governments, on discussions within the Committee.

With respect to the Continuing Committee's specific mandate, First Ministers decided at their inaugural Conference in February 1968 to undertake

a review of the Constitution, and in conjunction with this decision agreed:

THAT a Continuing Committee of officials be set up to assist the Constitutional Conference in its task;

...

THAT the Continuing Committee of officials be allowed to set up sub-committees on specific questions; with the approbation of the Prime Ministers;

THAT, without limiting the above terms of reference,... the following questions be examined by the Constitutional Conference and the Continuing Committee of officials:

- (a) official languages;
- (b) fundamental rights;
- (c) distribution of powers;
- (d) reform of institutions linked with federalism, including the Senate and the Supreme Court of Canada;
- (e) regional disparities;
- (f) amending procedure and provisional arrangements;
- (g) mechanisms of federal-provincial relations.

Although the Conference provided no specific direction on how the C.C.O. was to go about fulfilling this mandate, the Committee was to establish its own ground rules and methods of proceeding during its first meeting at Mont Gabriel in May 1968.

In the course of discussion at that first meeting, it was decided that as the Continuing Committee had been created to assist the Constitutional Conference, it should attempt to identify and define problems, seek to clarify issues, focus attention on questions requiring the consideration of First Ministers, and look for possible avenues of solution in respect of areas where conflicts might arise. It was clearly recognized, however, that the C.C.O. had not been intended or empowered to take decisions of a major procedural or substantive nature.

It soon became apparent that members of the Committee were not in agreement over the scope of the review intended by First Ministers, with some delegations interpreting the Conference's decision as calling for a broad and fundamental review of all aspects, written and unwritten, of the entire constitutional framework. Others considered that the review was intended simply as an examination of the British North America Act, with a view to considering amendments to it. In order that the Committee might proceed, it was agreed after discussion that the intention for a total review would be assumed, on the understanding that the direction of the Conference would be sought at its next meeting.

Given this tentative decision to proceed with a total review, it was agreed that delegations could submit, in accordance with the federal government's suggestion, a series of propositions relating to all aspects of the constitution and not only to the seven items that had been specifically designated by the First Ministers in February 1968. This procedure would permit the use of a systematic approach embodying the simultaneous consideration of general principles and particular issues.

From the propositions subsequently received, the Secretariat extracted the basic concepts which were involved. For discussion purposes, the propositions were also grouped under the following headings:

- (a) Object of the Review
- (b) Objectives of Confederation
- (c) General Principles of the Constitution
- (d) Specific Elements to be provided for in the Constitution:

Fundamental Rights

The Constitution of the Central Government

The Constitutions of Provincial Governments

Constitution of the Judicial System

The Distribution of Legislative Powers

Intergovernmental Relations

External Relations

Amendment Procedures

General Provisions

(e) Transitional Provisions

(f) Adoption of the Constitution

The above categories were chosen simply for the purpose of facilitating the consideration of propositions dealing with all aspects of the constitution, both written and unwritten, and were therefore to bear scant resemblance to the actual format of the subjects eventually selected by First Ministers for specific consideration. The Continuing Committee was to devote a considerable degree of attention during its first five meetings to subjects covered in these categories, some of which would not be directly referred to later in the review, such as objectives of Confederation, the general principles of the constitution, and the constitutions of the central and provincial governments. Although such questions were not discussed following the fifth C.C.O. meeting, the Committee undoubtedly profited as a result of their having been examined, as it enabled members to gain an awareness of the scope of the constitution which would prove useful later while carrying out a detailed examination of specific subjects.

Following its discussion of propositions, a Secretariat briefing paper summarizing the views that had been expressed was presented to the second meeting of the Conference in February 1969. At that meeting, the Conference reaffirmed its intent to complete a comprehensive review of the constitution, and agreed that the review should proceed at an accelerated pace.

With respect to the Continuing Committee specifically, the Conference decided:

- (a) to hold informal working sessions with the C.C.O. in order to provide more continuous direction to the process of constitutional review;
- (b) that the C.C.O. be authorized to establish such sub-committees, working groups or task forces as seemed to be required for its purpose;
- (c) that all special committees of officials should be constituted as sub-committees of the C.C.O.; and
- (d) that the C.C.O. should assist other ministerial committees as required.

It would appear that the intention behind these decisions was to confirm the C.C.O. in a central role as the prime co-ordinating agency in which all matters would receive preliminary examination before being referred to the Constitutional Conference. However, in practice, though the Continuing Committee did establish its own sub-committees on official languages, sales taxes, and death duties, it was not able to maintain a working relationship with all sub-committees of officials. The creation of the ministerial committee on official languages meant that control over the corresponding sub-committee passed from the C.C.O. to the ministerial committee, and the Sub-Committee on Fundamental Rights was responsible only to the ministerial committee which it had been designed to serve. As for the Conference decision to hold informal working sessions with the C.C.O., the results suggest that this may have been more of a rationalization to permit First Ministers to hold closed sessions than a desire to involve officials in discussions at the political level.

First Ministers also agreed, at the second meeting of the Constitutional Conference, that certain matters should receive immediate priority and, accordingly, directed the Continuing Committee to give its immediate attention to the study of the distribution of powers, in particular, the taxing and spending powers.

In accordance with this directive, the Committee abandoned its consideration of propositions and embarked on the practice of examining, on the basis

of detailed discussion papers submitted by individual delegations, specific subjects determined by the First Ministers. This pattern was maintained from the sixth C.C.O. meeting in May 1969 up to and including the fourteenth meeting in January 1971, following which the Committee's work was interrupted by the decision of the Conference in February to proceed toward adoption of a charter.

Although conclusions of the February 1971 Conference recorded that the Continuing Committee would continue to perform its on-going co-ordinating work, the Committee was not called upon, and as an alternative, for reasons of expediency, a special ad hoc committee of officials, most of whom had been members of the C.C.O., was convened for a briefing on the draft texts to be included in the proposed charter. This was to be followed by a similar ad hoc meeting of ministers in preparation for the Victoria Conference in June. The C.C.O. was therefore to be effectively superseded in its function of preparing for the final meeting of the Constitutional Conference.

Presumably, the way would have been open for the Committee to have resumed its unfinished work later in 1971 had the Victoria Charter been accepted by all eleven governments and the constitutional review continued as proposed. However, the inability to secure the unanimous agreement of all governments resulted in the whole constitutional review, including the work of the Continuing Committee of Officials, being held in abeyance until the resumption of further constitutional discussions.

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The sections of this chapter which follow are devoted to a summary description of the Continuing Committee's examination of specific subjects over the course of its fourteen meetings (see Appendix D for dates of each meeting). These subjects have been organized in accordance with the list of seven questions identified by the First Ministers at the inaugural meeting of the Constitutional Conference in February 1968 (see Appendix B). However, the order of the third and fourth questions has been interchanged to reflect more appropriately the chronological sequence of discussions within the Continuing Committee.

A. Official Languages

Although it was one of the seven subjects designated by First Ministers in February 1968 for examination by the Constitutional Conference and the Continuing Committee of Officials, official languages was never discussed in depth by the C.C.O. and it did not appear on its agenda after the Committee's fifth meeting. This may be explained by reference to two factors:

- (a) the creation of the Sub-Committee on Official Languages to undertake a detailed study of the subject; and
- (b) the political implications inherent in the subject of official languages, as in those of fundamental rights and institutions of federalism (the Senate and the Judiciary), limited the usefulness of discussions at the official level except with respect to operational aspects. In all three cases, the C.C.O. was relieved of responsibility for these subjects after its fifth meeting in favour of consideration by special ministerial committees. The fact that the latter demonstrated no greater success in dealing with the constitutional aspects of such subjects is of lesser importance than the realization that the C.C.O. could not productively continue its examination of these questions requiring essentially political solutions.

The Continuing Committee's examination of the subject of official languages began at its first meeting at Mont Gabriel in May 1968. In introducing the topic, the Chairman noted the consensus on language rights that had been reached by the Conference the previous February and in particular, the recommendation calling for the

Establishment of a special committee to examine the Report of the Royal Commission on Bilingualism and Biculturalism and the views expressed at this Conference on the Report, and on other matters relating to language rights and their effective provision in practice, and

to consult on methods of implementation, including the nature of possible federal assistance, and on the form and the method of constitutional amendment.

In accordance with this consensus, the Committee agreed to establish the Sub-Committee on Official Languages. It was noted that First Ministers might in future wish to establish a ministerial committee, but in the meantime, the Sub-Committee would apply itself to the task as described in the consensus and report back to the Continuing Committee as required.

The first meeting of the Sub-Committee was held in July 1968 and a synopsis of the summary record of that meeting was presented by its chairman as a report to the second meeting of the Continuing Committee later in the same month (see Chapter 5 for details of the Sub-Committee meeting). After receiving this report, the C.C.O. went on to examine propositions relating to official languages, but decided after some preliminary discussion to refer these propositions to the Sub-Committee and await its next report before giving the matter any further study.

With this additional material to consider, the Sub-Committee met for a second time in October 1968 (see Chapter 5). Its report covering the considerations regarding both the operational and constitutional aspects raised during discussions, together with proposals regarding the future work programme, was presented in draft form to the fourth C.C.O. meeting in November 1968.

At an informal meeting of the Sub-Committee coincident with the fifth C.C.O. meeting in December, minor revisions were incorporated in the report and it was formally accepted by the Continuing Committee. The C.C.O. decided, however, that in lieu of having the Sub-Committee's report submitted formally to the Constitutional Conference, its contents would be reflected in the Secretary's "Briefing Paper on Discussions within the Continuing Committee of Officials", as well as in the Continuing Committee's own report to the Conference.

On receipt of these two reports, the second Constitutional Conference elected to establish the

Committee of Ministers on Official Languages, to be assisted by both the Continuing Committee of Officials and the Sub-Committee on Official Languages. In practice, however, the C.C.O. became dissociated from any further discussion of official languages. The ministerial committee, under the chairmanship of the Secretary of State, concerned itself almost entirely with the operational aspects of the official languages programme, and the chairmanship of the Sub-Committee passed from Mr. Hodgson of the Privy Council Office to the Under-Secretary of State, Mr. Jules Léger. While structurally the Sub-Committee remained responsible to the C.C.O., it assumed an effective and exclusive relationship with the committee of ministers as of February 1969 (see Chapter 5 for details on the work of the Sub-Committee after that date).

B. Fundamental Rights

As in the case of official languages, fundamental rights, though one of the seven major items referred to the Continuing Committee for specific attention, was handed over to a ministerial committee once the C.C.O.'s discussion of propositions had been abandoned. During these discussions, the Continuing Committee did, however, manage to raise most of the arguments which would be germane to the later consideration of the subject by the Conference and the ministerial committee.

When the C.C.O. first addressed itself to the subject of fundamental rights at its first meeting in May 1968, it decided to postpone consideration of the subject and the ways in which it might be handled until propositions on the subject had been submitted. Some early discussion of fundamental rights, in which the scope of the topic was debated, took place at the second and third meetings of the Committee in July and September in connection with consideration of propositions related to the Committee's examination of the "Objectives of Confederation".

The main discussion of the subject, however, took place at the fourth C.C.O. meeting in November 1968 when the Committee addressed itself to the propositions received and included in the category

of "Fundamental Rights". Chief among these was a detailed federal proposition containing provisions for possible inclusion in an entrenched charter of human rights. This broad proposal sparked an extensive and detailed discussion, entailing the enunciation of the propositions and arguments of all delegations concerning the treatment of fundamental rights in a new constitution.

The contrasting arguments raised by delegations revealed, as was to be the case later in the ministerial committee on fundamental rights, that there were in the several governments a variety of reactions to the idea of entrenching fundamental rights ranging from agreement in principle, through agreement with reservations, to definite opposition. A frequently expressed view was that if entrenchment were to proceed, careful attention to the definition of the rights and freedoms to be guaranteed would first be required. It was suggested that some governments might favour the entrenchment of some, but not all of the rights which had been proposed for inclusion in a charter of human rights.

Concern was expressed about the extent of impairment of legislative powers which might result from an entrenchment of rights, and it was suggested that this could only be assessed by considering in detail the specific rights which were proposed for inclusion in a charter of human rights. Questions were also raised concerning the jurisdictional aspects of the administration and enforcement of entrenched rights. Views were expressed that positive legislative action by both federal and provincial governments in their own areas of jurisdiction would be required to implement fully the guaranteed rights, and that the effect of entrenchment should not be to transfer power from one jurisdiction to another.

Because of concern about the possible jurisdictional effects of an entrenchment of rights, the suggestion was made that it might be preferable to settle upon the distribution of powers before resolving the matter of entrenchment. An opposing view adopted by the federal government was that it would be more logical to discuss the distribution of powers after agreement in principle had been reached on those areas which would be placed beyond legislative competence; in this way the rights of individuals could be settled before the rights of governments.

The New Brunswick delegation observed that the proposal to entrench in the constitution the many rights and freedoms which had been considered during the Committee's discussions raised a large number of practical and technical problems which should be examined in depth, and suggested that a sub-committee should be established for this purpose. It was pointed out, however, that before any such action could be taken, First Ministers would have to be informed of the Committee's discussions. Accordingly, a summary of the views expressed in the C.C.O. was included in the Secretariat's "Briefing Paper on Discussions within the Continuing Committee of Officials" for submission to the Conference.

When First Ministers came to discuss fundamental rights at their second meeting in February 1969, they elected to establish the Committee of Ministers on Fundamental Rights to study all matters relating to the subject. This ministerial committee in turn subsequently established its own Sub-Committee on Fundamental Rights which, although it observed the formality of submitting a "status" report to the C.C.O. following its third meeting, maintained no working relationship with the Continuing Committee. (See Chapters 5 and 6 for subsequent discussions on fundamental rights.)

C. Reform of Institutions Linked with Federalism,
Including the Senate and the Supreme Court of Canada

Although the general question of the reform of institutions linked with federalism was specifically identified by First Ministers in 1968 for examination by the Constitutional Conference and the Continuing Committee, the C.C.O. never addressed itself to that subject per se, dealing instead with the related questions indirectly as part of more general subjects. The several propositions that were received concerning constitutional changes to existing federal institutions were discussed under the broad heading of the "Constitution of the Central Government", although they were primarily related to the reform of the Senate. Similarly, the discussion of propositions related to the Supreme Court of Canada was carried out under the general heading of the "Constitution of the Judicial System". Despite this obfuscation

of the issue, the Continuing Committee did manage by its fifth meeting in December 1968 to have a preliminary discussion of the proposals which had been put forward concerning the Senate and the Supreme Court.

(1) The Senate

With regard to the Senate, the most common theme of the propositions submitted was that the constitution should continue to provide for a second chamber, but that certain changes should be considered to enable the Senate to better reflect regional and provincial interests. Suggestions were received whereby provinces would be granted a greater role in the appointment of Senators, and the representational pattern would be altered to better reflect regional and provincial population distribution. Other proposals called for additions to Senate powers and responsibilities, including the power to approve key federal appointments such as judges of the Supreme Court.

The various views expressed were summarized in the Secretary's "Briefing Paper on Discussions within the Continuing Committee of Officials" and thereby reported to the second meeting of the Constitutional Conference. The Conference in turn agreed to establish the Committee of Ministers on the Senate to study possible constitutional provisions relating to the reform of the Senate, and although this ministerial committee was to hold only one inconclusive meeting, the matter was never referred back to the C.C.O. (See Chapter 5 for discussions in the ministerial committee.)

(2) The Supreme Court of Canada

A great part of the Continuing Committee's discussion of the Supreme Court focused on the above-mentioned suggestion that appointments to the Court should be subject to the approval of the Senate, assuming that certain changes were made in representation and method of appointment to the Upper House. An alternative suggestion, but one which was also intended to ensure a measure of provincial participation in the appointment of judges, called for the establishment of a consultative process by which the federal government would discuss proposed appointments to the Supreme Court.

Also raised was the proposal that the Supreme Court, as the final arbiter of jurisdictional differences between governments, might be specifically provided for in the constitution rather than in a federal statute, as in the present case. Another major issue was contained in a proposition submitted by the Quebec delegation, that a separate Constitutional Court should be established for adjudicating on questions involving interpretation of the constitution, and that a proportion of the judges on this Court should be appointed by the provincial governments.

Although it was emphasized that these discussions constituted only a very preliminary examination of the subject, the Committee decided that the views expressed should be reflected in the Secretary's Briefing Paper to the second Constitutional Conference. Following its own discussion of the subject, the Conference decided to establish the Committee of Ministers on the Judiciary to carry out further study on the general question of the Judiciary as well as on the Supreme Court of Canada, and as a result, the C.C.O. was not involved further. (See Chapter 5 for discussions in the Committee of Ministers on the Judiciary.)

D. Distribution of Powers

Of the original list of seven items designated by First Ministers for examination by the Conference and the C.C.O. the question of distribution of powers commanded by far the greatest degree of attention within the Continuing Committee. This general question embraced a wide range of subjects which would come up for detailed study, and also entailed the examination of a variety of other considerations such as methods of approach, timing, and the scope of the review being undertaken. In many instances, the discussion of distribution of powers was so closely related as to be virtually inseparable from the Committee's consideration of the handling of the constitutional review process.

This close interrelationship was demonstrated early in the review by the Quebec government putting forward its detailed propositions concerning a proposed distribution of powers as a suggested methodological

framework for the actual conduct of the constitutional revision. Similarly, the main theme of the New Brunswick proposals for the furtherance of the review process was that each government should submit a schedule outlining a proposed distribution of powers in order that an "overview" of the revision process might be derived.

However, despite the prominence of the subject in the overall scope of the constitutional discussions, very few propositions, apart from those submitted by Quebec, dealt specifically with the details of an actual distribution of powers. There was considerable reluctance on the part of a number of delegations to commit themselves or their governments even tentatively in this way for fear of introducing an unwanted degree of rigidity at an early stage of the constitutional revision. In this connection it was recognized that the release of the Quebec propositions on this subject had been necessitated by the need to cope with a previous unofficial leak of Conference material, and reservations were expressed over the wisdom of other governments making their own proposals public.

The suggestion was made that discussions concerning the distribution of powers might best proceed in the light of conclusions concerning other elements of the constitutional review, such as fundamental rights and official languages, as powers could more logically be allocated if it were known what matters were to be placed beyond legislative enactment. Questions were also raised as to whether special sub-committees ought to be convened to undertake the detailed study required, or whether the Continuing Committee, because of its proximity to governments, was best suited to undertake the task.

These and other questions concerning the general method for carrying out the review and the sequence in which various subjects should be examined were incorporated in a general request for guidance put before the second meeting of the Constitutional Conference in the form of a report from the C.C.O. A summary of the C.C.O. discussions regarding the distribution of powers was also included in the Secretary's Briefing Paper for submission to the Conference.

As a result of their deliberations at their second meeting in February 1969, the First Ministers recognized the study of the distribution of powers as a matter of priority and specifically directed the Continuing Committee to give immediate attention to the specific questions of the taxing and spending powers. Accordingly, at its sixth meeting the C.C.O. embarked on a detailed study of the two latter subjects, taxing and spending powers, putting aside temporarily further consideration of methodology.

The question of the approach to the study of distribution of powers remained alive however, with New Brunswick presenting to the eighth meeting of the C.C.O. a detailed working paper on the "Problems of Studying the Distribution of Powers under the British North America Act - The Search for an Approach". This paper, discussed at the ninth C.C.O. meeting, proposed that at the same time as the subject-by-subject studies continued, an overall view of the distribution of powers should be sought. In reply, the federal delegation suggested that the best way of developing a total picture was by going through the type of analysis for each function as New Brunswick was suggesting for the totality, and that to embark on both activities at the same time would result in a needless duplication of effort. The Committee was also reminded that, in the conclusions of the February 1969 Conference, First Ministers had directed officials to give priority to specific subject areas.

Undaunted, the New Brunswick delegation prepared a further paper, "The Continuing Committee of Officials and its Program of Work", proposing an approach whereby each government would present in chart form an outline for a new distribution of powers. Contained in the document was New Brunswick's sample of a distribution "grid" which, it was proposed, would enable areas of agreement and disagreement to be identified and would impart a sense of direction to the discussion of the distribution of powers. The approach received considerable support, particularly from the Quebec delegation, which submitted its own "grid" at the twelfth meeting of the C.C.O. Also presented at that meeting were papers from New Brunswick and

Manitoba commenting on the course of the review process.

In view of the general lack of agreement on methodology, the Committee opted to await the views of First Ministers on the matter at their forthcoming Conference in September 1970. In order to facilitate discussion at that time the Secretariat prepared two background papers, "A Summary of the Major Subject Areas in the Constitutional Review Process" and the analytical "The Constitutional Review Process", which outlined the progress in each subject area and identified the main considerations affecting the constitutional review.

In the conclusions issued following their September meeting, the First Ministers declared their intention to expedite the review process by giving the Continuing Committee of Officials more specific direction, including a request to continue with the study of the distribution of powers. There was, however, no clear indication of how this was to be accomplished and in the last two meetings of the Continuing Committee, the methodology for the further discussion of the distribution of powers was not dealt with.

The following sub-sections describe the subject areas discussed by the Continuing Committee under the general heading of distribution of powers.

(1) The spending power

Following the specific directives of First Ministers as recorded in the conclusions of the February 1969 Constitutional Conference, the Continuing Committee undertook to examine in detail the spending and taxing powers. While both subjects were initially approached in tandem, they were never discussed jointly by the C.C.O. and were, in fact, treated quite separately, with the examination of the taxing power entailing the creation of two specialized sub-committees which did not report until a year after the C.C.O. had completed its study of the spending power.

Consideration of the spending power extended over four consecutive C.C.O. meetings from April to November 1969, and revolved around two central questions: the determination of a national consensus

regarding shared-cost programmes, and compensation for non-participating provinces. In accordance with its accepted method of proceeding, the Committee did not attempt to arrive at any recommendations or conclusions as a result of its deliberations, but rather, the main points raised during discussion were reported to the Constitutional Conference via a briefing paper from the Secretary.

With regard to the course of discussion within the Committee, consideration of the spending power was initiated by the examination at the sixth C.C.O. meeting of a federal working paper, later to be released in revised form as a federal White Paper on "Federal-Provincial Grants and the Spending Power of Parliament". The paper was divided into two main parts:

- (a) a rationale for the existence of the federal spending power; and
- (b) a specific proposal for limiting the use of the spending power.

Following lengthy debate in which both general points and detailed comments on the determination of a national consensus and compensation for non-participating provinces were made, the federal government undertook to revise the document, and a second draft was distributed for examination at the seventh meeting of the C.C.O.

The revised paper was considered in a similar fashion but with consideration being given also to specific questions concerning the continuation of shared-cost programmes of a regional nature.

In addition, the Ontario Government presented a paper entitled "The Ontario Position on the Spending Power" concerning difficulties associated with the use of the federal spending power for shared-cost programmes, and outlining some proposals for consideration. Following discussion by the Committee, this paper was also revised and was subsequently presented to the Constitutional Conference.

When the Constitutional Conference discussed the subject of "The Spending Power" at its third meeting in June 1969, it was generally agreed that the Parliament of Canada should continue to have the power to make conditional grants to provincial

governments, provided a satisfactory formula for determining a national consensus in favour of particular programmes, and an acceptable formula for compensation in non-participating provinces could be arrived at. The Conference also agreed that the C.C.O. should resume its examination of alternative formulae, and, in accordance with these conclusions, the Committee devoted further study to the matter at its eighth and ninth meetings.

In general terms, two main points of view were reflected in the Committee's discussions. Some delegations favoured the approach of writing into the constitution a specific formula for determining a national consensus on new shared-cost programmes in areas of exclusive provincial jurisdiction. In this connection, several varying formulae based on combinations of Senate divisions, provinces, regions and proportions of the total population were suggested by individual delegations. Other delegations expressed concern about any constitutional limitation on the spending power of the Parliament of Canada, and suggested instead that appropriate consultative or administrative arrangements could be devised to ensure that provincial views were taken into account before new shared-cost programmes were initiated in areas of provincial jurisdiction. There was some question as to whether the Constitutional Conference's instruction left the Committee with the latitude to examine the latter point of view. It was thought, however, that the Continuing Committee should not assume that the "alternative formulae" referred to in the Conference's conclusions meant only mathematical type formulae for inclusion in the constitution.

With regard to the question of compensation, several delegations expressed the view that this concept as applied to non-participating provinces should form an integral part of any approach to shared-cost programmes in the future. One of the primary methods for compensation considered involved the possibility of payments to individuals. Under this approach, the federal government would pay to the people of non-participating provinces grants equivalent in the aggregate to the average amount paid to governments of participating provinces. The main alternative approach discussed involved the payment by the federal government, directly to a provincial government which had rejected a programme, of the fiscal equivalent

of the taxes collected in that province to finance the programme.

Several other suggestions were put forward, including a proposal by New Brunswick that, if the federal government adopted a more flexible attitude with respect to shared-cost programmes in the future, then perhaps the requirement for establishing a consensus and paying compensation could be avoided, as well as all the attendant complications.

In order that First Ministers might be apprised of its discussions, the Committee agreed to have the Secretariat prepare a draft report describing the proposals which had been raised and identifying the arguments for and against the various approaches suggested. This draft was reviewed at the ninth C.C.O. meeting. On the basis of comments made at that meeting, the draft was revised and included in the Secretariat's briefing paper submitted to the December 1969 meeting of the Constitutional Conference. (See Chapter 6 for further discussions on the spending power.)

(2) The taxing power

As mentioned previously, consideration of the taxing power was undertaken in tandem with the spending power by the Continuing Committee in accordance with the specific directives of the February 1969 meeting of the Constitutional Conference.

In the case of taxing powers, however, following a preliminary discussion at its sixth and seventh meetings, the Continuing Committee was augmented by a sub-committee of officials on sales taxes and by a similar sub-committee on death duties. These two sub-committees were created to assist the Continuing Committee with regard to the very complex and detailed questions which a study of the taxing power entailed. As a result, the C.C.O. was able to confine much of its discussion on the taxing power to a consideration of the reports from the sub-committees; these documents were later adapted for the purpose of reporting on the discussions regarding sales taxes and death duties to the September 1970 Constitutional Conference.

As in the case with the spending power, the initial consideration of the taxing power centred about a draft federal working paper presented to the

sixth C.C.O. meeting. The paper entitled "The Taxing Powers and the Constitution of Canada" outlined the federal position regarding the future disposition of the taxing powers, and included an endorsement of the "principle of access" whereby both levels of government would have broad and overlapping powers in most of the major tax fields, subject to certain qualifications in the national interest. In addition to these general considerations the paper went on to examine questions relating to indirect provincial sales taxes, estate taxes and succession duties, the taxation of property, an intergovernmental tax commission, equalization of provincial revenues and a proposal for the establishment of two special working groups which were to become the sub-committees on sales taxes and death duties.

On the basis of the Continuing Committee's reaction, amendments were made to the federal draft, and a revised version was put forth for discussion at the seventh C.C.O. meeting. This second draft incorporated several major changes including new sections on the taxation of personal, corporate and business income, on federal-provincial consultation, and on equalization. The paper was also expanded to take into account the British Columbia proposal for an exclusive assignment of direct taxes to the provincial governments.

During the discussion of the revised federal paper, the Ontario delegation suggested that the question of taxing powers involved a good deal more than the principle of access, and drew the Committee's attention to a paper entitled "Intergovernmental Finance and Ontario's White Paper on Provincial-Municipal Taxation Reform" which had been distributed to the C.C.O. Included in this paper was an outline of the main features of Ontario's projected tax reform programme, together with proposals for improved federal-provincial co-ordination including a ministerial policy co-ordination committee and a federal-provincial tax commission. The observation was made that the Ontario paper failed to distinguish adequately between the constitutional and non-constitutional aspects of tax reform. Given the possibility that a premature discussion of federal tax reform legislation might result from a presentation of the document to the Constitutional Conference, Ontario agreed to make certain editorial modifications,

and the paper went forward to the June 1969 meeting of First Ministers (see Chapter 6).

When the Constitutional Conference discussed the subject of the taxing powers in June 1969, the First Ministers agreed that Parliament and the provincial legislatures should generally have access to all tax fields, as long as taxpayers were protected against taxation by more than one province, the erection of tax barriers to interprovincial trade were avoided, and provision was made for more regular and adequate federal-provincial consultations. The First Ministers also agreed that the Continuing Committee consider further how these principles, if formally accepted, might be applied in a revised constitution and, in particular, consider alternative methods for their application to the taxation of estates, transactions and real property.

In considering how it might best comply with these instructions, the Continuing Committee entertained a number of suggestions, including two federal documents proposing that technical sub-committees, on sales taxes and death duties respectively, be formed to undertake the highly specialized examination required in these two fields. This proposal was adopted, following a discussion in which the following points were made:

- (a) it was recognized that appointees to the sub-committees should possess the special expertise required; thus, provinces lacking the available manpower to participate on this basis could choose not to be individually represented;
- (b) the sub-committees were not intended to reach conclusions, but rather to identify the factual implications of the alternatives for report to the Continuing Committee.

On this understanding, the C.C.O. approved the terms of reference for the two sub-committees. Having thus delegated its responsibility for undertaking a detailed study of sales taxes and death duties, the C.C.O. was able to turn its attention to other subjects, pending receipt of the sub-committees' interim and final reports.

(1) Sub-Committee on Sales Taxes

The terms of reference for the Sub-Committee on Sales Taxes were set out as follows:

The Sub-Committee would be charged with the responsibility of exploring alternative ways of ensuring that provincial sales taxes would apply only "within the province", with particular reference to the following alternatives:

- (1) Confining provincial transactions taxes to the direct level;
- (2) Confining provincial transactions taxes to the retail level;
- (3) Confining provincial transactions taxes to the goods and services used and consumed within the province.

It was also agreed that the Sub-Committee should report its findings to the Continuing Committee at its next meeting.

Proceeding on the basis of this mandate, the Sub-Committee met in October 1969, and carried out a preliminary study, concentrating on the third alternative - limiting provincial sales taxes to goods and services consumed within a province. At the request of the Sub-Committee, the Secretariat later prepared an interim report identifying the main points raised during this meeting.

Following discussion of this interim report at the ninth C.C.O. meeting, it was generally concluded that many questions remained to be answered and that the Sub-Committee should be asked to endeavour to arrive at a technical evaluation of the implications of the various alternatives, without attempting to take into account the political factors involved.

A second meeting of the Sub-Committee was held in April 1970 and a full examination of the implications of the alternatives took place. The detailed report of the Sub-Committee's discussions went to the eleventh C.C.O. meeting where comments were received. The Continuing Committee considered that it was not sufficient simply to present the

implications of the various alternatives, and accordingly it was agreed that the Secretariat should prepare, on the Committee's behalf, a brief covering report pinpointing the major considerations that applied. This "Report on Jurisdiction in Regard to Transaction Taxes" was reviewed at the twelfth C.C.O. meeting in September 1970, and with minor alterations went forward to the meeting of the Constitutional Conference two weeks later.

The Report indicates that the third alternative, under which provinces would be empowered to use indirect taxes applied to goods or services used or consumed within the province, was preferred. However, it was noted that there was no unanimity of opinion in the Sub-Committee as to whether or not it should be adopted.

The Report also recorded that the Continuing Committee was unable to reach a consensus on the central issue of how to reconcile the principle of access with the need to ensure that provincial taxes did, in fact, remain within the province. On this inconclusive note, the issue of sales taxes passed from the C.C.O. to the Conference (see Chapter 6).

(ii) Sub-Committee on Death Duties

The terms of reference for the Sub-Committee on Death Duties were set out as follows:

- (1) To identify the implications of exclusive Federal jurisdiction;
- (2) To identify the implications of exclusive Provincial jurisdiction;
- (3) To identify the implications of concurrent jurisdiction;
- (4) In examining (1) and (3) to consider the problem of relating federal estate tax laws to the Civil Code;
- (5) To report its findings to the Continuing Committee of Officials at its next meeting.

In accordance with this mandate, the Sub-Committee met in October 1969, to consider how it might best carry out the task of identifying the

implications of the three approaches to the death duties field. Following that meeting, four delegations (Canada, Ontario, Quebec and Manitoba) submitted papers outlining the implications of the various alternatives for handling death duties in the constitution. The points made in these papers were then assembled into an interim report by the Secretariat for consideration by the Continuing Committee at its ninth meeting.

By way of further direction, the Continuing Committee concluded that it would be important for the Sub-Committee to continue its work in an effort to arrive at a technical evaluation of the various implications, advantages and disadvantages, which were identified in the interim report. It was also suggested that since the Sub-Committee's evaluation could not take into account the political factors which contribute to the development of governmental positions, an attempt should be made instead to assess, to the extent possible, the importance that might be attributed to the various implications from a technical point of view.

Accordingly, the Sub-Committee held two more meetings in February and April 1970, on the basis of which its final report was presented to the eleventh C.C.O. meeting in June. In the discussion of the report, a variety of views were expressed, as had been the case in the Sub-Committee. Most provinces favoured concurrent jurisdiction, while some of them indicated a preference for the Government of Canada to administer the field exclusively, after consultation, and to share the revenues with the provinces. Other provinces felt that only the provinces should have the use of this field of taxation, except in regard to the Canadian property of persons domiciled outside of Canada. The Continuing Committee was unable to reach a consensus on this central issue.

There was also discussion of the proposal to avoid double or multiple taxation of the same property passing on the death of a person, by restricting provinces to taxation of the property passing on the death of persons domiciled in the province. Agreement on this proposal could not be reached by the C.C.O., although many delegations recognized the desirability

of the objective and the possibility of achieving it relatively simply, effectively, and fairly by this means.

As it had done in the case of the report on sales taxes, the Continuing Committee decided to have the Secretariat prepare a shorter and less technical covering report for the purpose of transmitting the Sub-Committee's discussions to First Ministers. This "Report on Jurisdiction in Regard to Death Duties" was examined by the C.C.O. at its September 1970 meeting, and with the incorporation of some changes suggested by the Ontario delegation, the Report was then forwarded to the meeting of the Constitutional Conference being held later that month (see Chapter 6).

(3) Income security and social services

The heading "Income security and social services" encompassed the consideration of several interrelated issues as well as a major item of discussion within the C.C.O., public retirement insurance.

Apart from early mention, notably in the Quebec propositions concerning social policy in relation to the distribution of powers, the general question of income security and social services did not emerge as a major item for consideration until the ninth meeting of the C.C.O. in November 1969. At that time, the Committee reviewed a federal working paper entitled "Income Security and Social Services" which had been distributed prior to the meeting. The following were the main arguments in the federal government paper:

- (1) That the provincial legislatures ought to have exclusive jurisdiction over social services;
- (2) That Parliament and the provincial legislatures ought to have equal powers to make general income support payments to persons;
- (3) That Parliament and the provincial legislatures ought to have concurrent powers in respect of public income insurance measures, except that

- (a) unemployment insurance ought to fall under the exclusive jurisdiction of Parliament;
- (b) workmen's compensation ought to fall under the exclusive jurisdiction of the provincial legislatures; and
- (c) in respect of retirement insurance and associated benefits, Parliament's powers ought to be paramount.

On the whole, the paper met with considerable criticism, Quebec's reaction being the least favourable. The Quebec delegation recalled the position which had been put forward by the province, that all social services and income support programmes should be under provincial jurisdiction; attention was drawn to the fact that Quebec was in the process of formulating a new approach to family allowances to be adapted to the special needs of that province. The view was also expressed that the federal proposals tended to institutionalize the practices of the past, rather than provide for the needs of the future.

With reference to the argument that a federal presence was required in the income security field to facilitate the mobility of Canadians, general doubt was expressed that this factor was as significant as some contended. The suggestion was made that it was quite probable that mobility would be ensured through interprovincial agreement, even if there were not a federal presence.

In regard to the proposal for paramountcy in respect to public retirement insurance, the federal delegation argued that the effect of a paramountcy clause was not nearly as strong as some delegations were assuming, and that the Courts would not rule out provincial legislation except in cases of sharp conflict with federal legislation. It was observed further that federal paramountcy need not be a factor in all cases where there was a national interest, but that the field of retirement insurance had a particular country-wide application which seemed to warrant federal paramountcy.

At the conclusion of the discussion, it was generally agreed that the subject of paramountcy and

how it might be applied in a new constitution warranted separate consideration.

The matter was next discussed by the Constitutional Conference in December 1969, where it was agreed that the Continuing Committee of Officials should undertake a detailed examination of the application of the concept of paramountcy, federal or provincial, in the field of public retirement insurance.

In accordance with this directive the C.C.O. continued its study through its tenth, eleventh and twelfth meetings, seeking to identify possible alternative approaches to ensure portability of entitlement to benefits from public retirement insurance plans, other than providing for federal paramountcy in the constitution. With this goal in mind the federal delegation submitted a memorandum to the twelfth meeting of the C.C.O. in September 1970 entitled "Paramountcy and Public Retirement Insurance" which outlined the alternatives examined to that point, and suggested a further possibility - a constitutional provision requiring that powers be used in a manner that would ensure portability.

The feeling was expressed that there was really not much more that could be done in the Continuing Committee. Other delegations, however, wished to give further study to the most recent proposal, and it was decided that the Secretariat should prepare an interim report to the Conference proposing that, subject to direction from First Ministers, the Committee continue its work, with a view to reporting to a later meeting of the Constitutional Conference.

On receipt of the C.C.O.'s progress report at their September 1970 meeting, the First Ministers agreed that "the goal to be achieved was that portability of the benefits of public retirement insurance plans would be ensured". It was also agreed that "the Continuing Committee should continue to study the question of paramountcy, along with other alternatives for ensuring portability, with a view to submitting a final report at the next meeting of the Constitutional Conference".

When discussion was resumed at the fourteenth C.C.O. meeting in January 1971, the Committee first considered a paper from the Quebec delegation entitled

"Public Retirement Insurance and the Constitution" which had been distributed at the thirteenth meeting but not discussed. In summary, the Quebec paper contended that federal paramountcy was not necessary to ensure the objective of portability of entitlement to benefits from public retirement insurance plans. The paper argued that there should be exclusive provincial jurisdiction in this field, and that it would be sufficient to ensure portability to have in the constitution an obligation that provincial plans be made compatible. The federal delegation suggested that its own last proposal and the concept of compatibility in the Quebec paper were not that far apart. Accordingly, the Committee was able to put forward the opinion that:

... a reasonable assurance of portability might be possible through an addition to Section 94(A) of the BNA Act. Such a provision would require that powers in the field of public retirement insurance be used in future in a manner that would ensure portability of entitlement to benefits between retirement insurance plans.

This view was recorded in the C.C.O.'s final report on this subject presented to the February 1971 meeting of the Constitutional Conference (see Chapter 6). No further meetings of the Continuing Committee were to be held.

As a footnote to the discussion of income security and social services, it is interesting to observe that the discussion in the C.C.O. was but a smaller part of a growing confrontation between Quebec and Ottawa in the whole area of what came to be known as "social policy". In this connection, the Quebec delegation observed at the thirteenth C.C.O. meeting in December 1970 that the federal government had recently released White Papers on social security and unemployment insurance and that the Quebec government was preparing papers concerned with social policy, in particular, manpower and income security. It was suggested, in view of this, that the subject of income security and social services might be expanded to deal with the general subject of social policy.

The suggestion was not taken up by the Continuing Committee, the chairman having recommended that the

subject not be placed on the agenda for the January 1971 meeting of the C.C.O. The question was raised again at the January meeting, this time in relation to the agenda for the Constitutional Conference of February 1971. As a result, the subject of social policy, which in Quebec's view had been only partially dealt with in the discussion on income security and social services earlier in the review, would be brought forward for the attention of First Ministers in February.

It is interesting to note, in this instance, how the C.C.O. was able to perform as a preparatory body, articulating the request of a government for response at the first ministerial level.

(4) Economic growth

When consideration was being given at the eighth C.C.O. meeting to new aspects of the distribution of powers which might come up for discussion at the December 1969 Constitutional Conference, the federal delegation announced that it was engaged in a study of economic growth, as well as income redistribution and social security. It was thought that economic growth might be considered a priority item, because of the emphasis which had been placed on regional disparities by the Conference in the conclusions of the February and June 1969 meetings.

However, the broad subject of economic growth never did arouse a great deal of interest within the C.C.O. and it failed to go forward as such for the attention of First Ministers. It did, however, give rise to a far more extensive examination of capital markets and financial institutions, which will be discussed in the next section.

The first and, as it turned out, only discussion of economic growth took place at the tenth C.C.O. meeting in March 1970, when the federal discussion paper "Economic Growth and the Constitution of Canada" was put forward for the consideration of the Committee. It was pointed out that the presentation of a draft outline for a background paper rather than the draft of a full study complete with proposals represented a new approach and was meant to facilitate a preliminary examination of a subject prior to the development of positions by governments.

The declared purpose of the federal paper was to identify the elements of economic growth and the nature of governmental intervention, and to determine the criteria which might be relevant in making a judgement as to which powers ought to be federal and which provincial. Despite the explicitly tentative nature of the presentation, some delegations had difficulty with the paper, as several factors raised in relation to economic growth were also related to other aspects of the distribution of powers. Quebec in particular objected to the paper on the grounds that it seemed to be leading to conclusions regarding jurisdictions without taking social and cultural factors into account.

The Committee went on to discuss the detailed sections of the paper with the understanding that a number of papers on specific subject areas might be prepared, drawing from this background paper.

At the next C.C.O. meeting in June 1970, the federal delegation revealed that it was not proposing to submit a revised paper on the general subject of economic growth as had been indicated, but rather was planning to put forward a series of discussion papers on specific subject areas. This shift in approach may be related to the change of economic advisors on the constitution within the federal government which took place at this time.

Proceeding on this new tack, the first subject on which the federal government was planning to submit a paper concerned capital markets and financial institutions. It was hoped to have a draft ready for the next meeting of the Continuing Committee.

Also anticipated were papers on the subject of a common market for goods and services, and on environmental management, as these two questions also had aspects related to the general subject of economic growth.

In this way, further discussion of economic growth as such was abandoned as the Committee proceeded to direct its attention to the more specific questions falling under that heading.

(5) Capital markets and financial institutions

In connection with the decision described above to concentrate on specific subjects rather than the broad question of economic growth, the federal government indicated its intention, at the eleventh C.C.O. meeting in June 1970, to produce a draft working paper on capital markets and financial institutions.

It was noted that this subject had been proposed in a recent letter from the Prime Minister for discussion at the next meeting of First Ministers. It was hoped, therefore, that the draft of a working paper could be sent to the Continuing Committee by early August, so that the Committee might have a preliminary discussion of the subject at its next meeting. The federal paper would be a combination of both a background and a position paper, but it would not be presented in as finished a form as federal papers had been in the past (e.g., the paper on income security and social services). Therefore, it was not expected that there would be a published paper for the meeting of First Ministers, but rather there would be a more formative type of discussion.

Several provinces objected to the seemingly arbitrary setting of priorities which the presentation of the federal paper represented. New Brunswick, in particular, suggested that there ought to be a rational sequence in the discussion of the distribution of powers so that governments might be able to anticipate and respond in an orderly fashion.

As expected, a paper on "The Capital Market and Financial Institutions" was presented by the federal government at the September 1970 meeting of the C.C.O. This was the fourth in a series of working papers, the previous three having been those on the taxing power, the spending power, and on income security and social services. Beginning with a review of the principal institutions in the Canadian capital market and the jurisdiction over them, this latest federal document went on to suggest changes that could be made in the allocation of explicit legislative powers in order to clarify and simplify the authority of Parliament and of the provincial Legislatures in this field. The Committee's response was generally favourable although it was felt that the proposals needed further study; reservations were also expressed concerning the recommended changes in legislative jurisdiction.

At the end of the discussion, the chairman informed the Continuing Committee that the paper would be available for discussion at the September meeting of the Conference. In order to facilitate the work of First Ministers, the Secretariat was therefore asked to prepare a discussion outline setting forth the main proposals and observations which had been discussed in the Committee. When First Ministers were unable to reach any substantial measure of agreement concerning proposed changes, the subject was referred back to the C.C.O. (see Chapter 6). After further discussion at the Committee's thirteenth meeting, the view was expressed that the point had been reached where more progress might be achieved if specific aspects were referred to specialized groups.

A Secretariat discussion paper exploring this possibility was circulated among members of the C.C.O. for consideration at its fourteenth meeting in January 1971. The paper recalled the paragraph in the conclusions of the September 1970 Constitutional Conference, in which it was suggested that:

The Ministers of Finance and other Ministers, as appropriate, as well as the Continuing Committee of Officials, were asked to continue to study in detail the implications of various constitutional approaches to the general field of the capital market and financial institutions, in preparation for a fuller discussion by the Constitutional Conference at its next meeting.

The discussion paper went on to suggest that it might be appropriate to think in terms of having the Ministers of Finance consider the banking system and credit, and another group of ministers study the questions relating to the other financial institutions and the securities market. This proposal met with general agreement, though it was foreseen that the Ministers of Finance would probably be unable to consider the subject for some time in view of their heavy workload.

It was agreed, however, that the item of capital markets and financial institutions should be dropped from the agenda of the February 1971 Constitutional Conference pending examination by the Finance Ministers. It was also observed that the Secretariat should be involved, as appropriate, if the subject

were examined by ministers or officials, and it was left to the Secretariat to work out with the federal Department of Finance the nature of any such participation.

These expected developments were held in abeyance however, since the activity engendered by the Conference decision to proceed toward the adoption of a charter in Victoria was to preclude any further examination in this area.

(6) Environmental management

The subject of environmental management was first referred to in the Continuing Committee during its eighth meeting in October 1969 when it was noted that the Premiers' Conference at Quebec City in August of that year had recommended that the subject of pollution be considered at the next Federal-Provincial Conference.

It was not until the eleventh C.C.O. meeting in June 1970, however, that the subject was formally placed before the Committee by the distribution of two federal papers: "The Spatial Dimensions of Environmental Management in Canada"; and "Constitutional Jurisdiction over Environmental Management in Canada". It was pointed out that these papers were background studies which did not attempt to set out the policy proposals of the federal government. While the studies had been commissioned by that government, they did not necessarily reflect its views. However it was hoped that the papers would be helpful to all governments in developing proposals in this field.

It was noted that the first paper mentioned above attempted to examine the spatial extent of certain environmental problems, without trying to suggest how constitutional powers over environmental management problems ought to be distributed. The second study was an analysis of the existing distribution of powers in the field of environmental management. The discussion of these papers was primarily exploratory and most of the comments made

were related to the scope of the study of environmental management.

With the aim of meeting some of these comments, the federal government undertook to prepare a memorandum on "The Subject of Environmental Management" in an attempt to outline the parameters of the analytical paper which was being prepared for consideration at the next C.C.O. meeting and at the September 1970 Constitutional Conference. The memorandum would define the concepts of "environment" and "management" to be employed in the larger paper, and propose that, for purposes of constitutional review discussions, the ecological system within Canada be divided into two spatial entities: urban regions, and rural and territorial areas.

This memorandum was distributed to members of the C.C.O. in July 1970, but when the Committee met the following September in preparation for the Conference later that month, the expected federal working paper was not yet available. In its place, the Committee was presented with a technically oriented federal discussion outline which detailed the background on which constitutional proposals might be based.

A question was raised concerning the relevance of this kind of presentation to the constitutional review exercise, and a number of points were made. Some delegations expressed doubt that the detailed technical description of the environmental problem was necessary or appropriate. It was suggested that such an examination belonged in other forums concerned with current operational matters related to the problem. A further view was that it would be important not to burden the First Ministers with large technical papers, but to get them to the constitutional issues as quickly as possible. In general, it was felt that governments were well aware of the gravity of the environmental problem, and it was not necessary to establish that point.

On the basis of these and other comments, the federal government prepared a revised discussion outline focusing on the constitutional considerations in environmental management, for consideration by the First Ministers at their September meeting.

In their deliberations, the First Ministers concentrated on the general considerations affecting the various aspects of environmental management (see Chapter 6). In the conclusions of their September Conference they restricted themselves to general statements, including the agreement that:

...governments should continue to study the constitutional aspects of this subject with a view to presenting proposals for possible constitutional changes in jurisdiction which would be discussed at the next meeting of the Conference.

The examination of possible constitutional action to take account of pollution problems was thus referred back to the C.C.O.

Since the expected federal working paper was not available for its thirteenth meeting in November 1970, the Continuing Committee based its discussion on the text of a telegram that had been sent to all provincial delegations that same month by the federal government. This telegram contained the proposal that in the revision of the constitution, Parliament and the provincial Legislatures should be given new concurrent powers to make laws in relation to the control of pollution of air and water. It was also proposed that provincial powers in this new provision in the constitution would be paramount in relation to the control of pollution which originated and only had significant effects within the province; the federal powers in this new provision would be paramount in relation to the control of pollution which had significant international or interprovincial effects.

The federal delegation recalled that the discussions held by the First Ministers during the September meeting of the Constitutional Conference indicated a recognition of the necessity for shared responsibilities in dealing with pollution, and a desire to clarify federal and provincial responsibilities in this area. The federal delegation also indicated that the approach of the Government of Canada was now to give priority attention to the subject of air and water pollution, rather than to attempt to cover all aspects of the general subject of environmental management at the same time.

In accordance with this goal, a federal working paper concerning air and water pollution entitled "Constitutional Powers to Control Pollution" was distributed in advance of the February 1971 Constitutional Conference and examined by the C.C.O. at its fourteenth meeting in January. Contained in the paper was the following proposal:

In the light of the facts and arguments set forth in this paper, the government of Canada now proposes that in the comprehensive review of the Constitution, consideration be given to including in it a new concurrent power for Parliament and the provincial Legislatures to make laws in relation to the control of pollution of air and water. It is proposed that where there is conflict between a federal law made under this power, and a provincial law made under it, the federal law should prevail when it applies to control pollution which has, or if permitted would have, significant international or interprovincial effects but in other circumstances the provincial law would prevail over the federal law, notwithstanding the general constitutional doctrine that federal law is paramount in case of conflict.

Among the main points raised in discussion by the Committee was the view that it seemed preferable to stay with the present constitutional situation in respect of environmental management rather than to adopt the federal proposal. It was felt that a federal paramountcy based on a general criterion such as "significance" could lead to problems of interpretation. The question of the establishment of national standards also provoked considerable controversy.

A summation of the views expressed by the various delegations was included in the Secretariat's briefing paper circulated in advance of the February 1971 meeting of First Ministers. Both this document and the above federal working paper were examined by the February Constitutional Conference which agreed that further study of the various constitutional approaches would be required (see Chapter 6).

E. Regional Disparities

As one of the most basic questions facing First Ministers at the commencement of the constitutional review, the matter of regional disparities was included in the list of seven major items to be examined by the Conference and the Continuing Committee. To a large extent, however, the question defied easy resolution. The discussions throughout the review focused on acceptable constitutional provisions to implement legal or moral obligations. The C.C.O. was primarily concerned with the former aspect, the legal implications of a constitutional clause dealing with regional disparities.

The Committee's initial consideration of regional disparities took place at its second meeting in July 1968, in connection with the discussion of two of the basic objectives arising from propositions that had been submitted by governments:

to promote Canadian social, cultural and economic development and the general welfare of and equality of opportunity for all Canadians;

and

to promote the full development of all regions of Canada.

At that time a number of points were raised which were to become recurring themes throughout the discussion of regional disparities. Prominent among these was the suggestion that reference to the desirability of reducing regional disparities might be included in a preamble to the constitution. At the same time, it was recognized that because of the potential implications of the possible different interpretations of this objective, care would have to be given to the expression of such a goal. Another view was expressed to the effect that the problem of regional disparities could best be met by federal measures for equalizing the fiscal position of provincial governments and that the constitution should provide for a fixed method by which the equalization of provincial revenues would be achieved.

The Nova Scotia delegation, in particular, argued that a regional approach should be taken to economic development in Canada, while other delegations emphasized that care had to be taken to ensure optimum

growth for the country as a whole, as all regions benefited from growth in key sectors.

These arguments were summarized and reported through the Secretariat's briefing paper presented to the second meeting of the Constitutional Conference in February 1969. At that meeting First Ministers agreed that:

...the Continuing Committee of Officials should give special attention to the constitutional aspects of regional disparities, with a view to reporting to a Committee of Ministers as soon as possible.

In accordance with these explicit instructions the Continuing Committee returned to the subject of regional disparities at its sixth meeting in April 1969 in conjunction, partially, with its consideration of the spending power. At that meeting the Nova Scotia delegation emphasized the interrelationship between the two subjects, pointing out that specific constitutional provisions relating to the alleviation of regional disparities might be difficult to formulate, except within the concept of the spending power. At the same time, it was recognized that the examination of immediate arrangements to reduce regional disparities fell within the terms of reference of the Committee of Ministers referred to by the First Ministers in February 1969, and that the C.C.O. was expected to confine itself to constitutional aspects.

Three main types of constitutional provision in relation to the problem of regional disparities were identified for possible consideration:

the statement of an objective, probably in a preamble;

the statement of an obligation, possibly including some kind of formula and a review clause;

the provision of appropriate means to enable the central government to contribute effectively to the achievement of this objective.

The view was advanced by the British Columbia delegation that the concept of "economic disparity" rather than "regional disparity" should be under

consideration. The former problem was seen as arising in all regions and might best be tackled through some basic income guarantee for individual Canadians.

At its seventh meeting in May 1969 the C.C.O. decided that there was not much more on this subject that the Committee could usefully discuss at that stage, and officials were called upon to brief their own First Ministers for the June meeting of First Ministers.

Following the June Conference during which First Ministers were able to agree that the objective of reducing disparities across the country should be written into the preamble of a revised constitution, the C.C.O. renewed its study, giving further consideration to the implications of providing a constitutional obligation for the reduction of regional disparities. At the eighth meeting of the Committee in October 1969 two new papers were submitted: a paper from the Government of Canada, "Regional Disparities and the Constitution of Canada: A Further Examination of the Constitutional Obligation to Reduce Regional Disparities"; and a paper from the Government of New Brunswick, "Regional Disparities, Alternatives in a Constitutional Formula". From a discussion of these documents, the following points emerged.

- (a) There was general acceptance of the kind of moral obligation which would result from the statement of an objective in a preamble to the constitution.
- (b) Some delegations argued that it would not be practicable to attempt to provide a more specific, enforceable obligation within the substantive parts of the constitution.
- (c) A suggestion was made that it might be possible to provide something more than a moral obligation, even if it were not a legally enforceable obligation. This might take the form of constitutional

provisions defining certain norms, but without setting out precise formulae. Such an obligation would not be subject to enforcement by the courts, but the value of this type of provision would lie in the fact that public opinion and political processes could keep governments under pressure to meet their obligations.

- (d) The Quebec delegation suggested that specific mechanisms, such as a commission which would report periodically on the progress being made, might be devised to put pressure on governments to meet obligations in this respect.
- (e) It was observed that goals and obligations relating to regional disparities would apply to both levels of government, and that an appropriate distribution of powers would be a key factor in realizing goals or meeting obligations. A further observation was that appropriate machinery for federal-provincial relationships would be another important factor.

Reference was made as well to the related question of equalization payments and some delegations argued that a new constitution should include a substantive section defining the principles to govern equalization, without specifying a precise formula.

At its ninth meeting in November 1969, the Committee limited itself to consideration of a draft section on regional disparities in the Secretariat's briefing paper which went forward to First Ministers in preparation for the December Constitutional Conference. A Nova Scotia statement on regional disparities and equalization was presented to the Committee and attached as an appendix to the record of the meeting but was not discussed.

In the conclusions issued following their December 1969 meeting, the First Ministers reiterated the earlier agreement that the objective of reducing disparities across the country should be written into the preamble of a revised constitution as a basic goal of the Canadian people. There was some support for the inclusion of a substantive provision in the body of the constitution which would set forth the

obligation, not subject to judicial review, of the federal and provincial governments related to regional disparities. It was agreed that the Continuing Committee of Officials should give further study to the implications of placing specific clauses in the constitution.

On this basis the C.C.O. continued its study through its tenth and eleventh meetings. Additional papers were presented: a memorandum from the federal delegation, "A Non-Enforceable Constitutional Obligation to Reduce Regional Disparities"; and a further New Brunswick paper entitled, "Regional Disparities - A Constitutional Approach".

With regard to the proposal for a non-enforceable obligation, several provinces expressed doubts about the value of such an obligation, particularly if the preamble already contained a similar statement regarding the objective of working towards the reduction of regional disparities. It was also noted that as the obligation should apply to both levels of government, it would have to be stated in a very general manner in order to accommodate the various approaches which provinces might adopt. British Columbia reiterated its preference for a guaranteed minimum income plan which, it was suggested, would so raise the tax base of less prosperous provinces that it would preclude the necessity of special programmes to alleviate regional disparities.

The New Brunswick paper contained a proposal for a "purposes and principles" section in a new constitution in which the goal of reducing regional disparities would be set forth. The Nova Scotia delegation, however, considered this alternative to be too weak without provision for equalization payments being specifically set out in a substantive section, and strong arguments had been made in opposition to this latter possibility.

When, at the end of the first day of the eleventh C.C.O. meeting, it appeared that the topic had been exhausted, the Committee decided to present to the Conference a summation of the views and recommendations

that had been expressed. The federal government offered to prepare overnight, for consideration the following day, a draft report on the legal consequences of spelling out a non-enforceable obligation in the constitution. This draft was judged to be acceptable by the Continuing Committee, but it was suggested that the report to the Conference should be expanded to take account of other factors such as the distinction between the alleviation of regional disparities and equalization payments.

Accordingly, the Secretariat prepared an expanded redraft which was adopted in final form at the twelfth C.C.O. meeting in September 1970 for presentation to the Constitutional Conference later that month. The C.C.O. report, "A Constitutional Obligation to Reduce Regional Disparities" identified the main points raised in discussion and recommended that further examination of the constitutional aspects of regional disparities should proceed at a later stage of the constitutional revision when actual drafting of provisions would be considered in the light of the outcome of the review.

The C.C.O. report was considered by the First Ministers at their September meeting, and further discussions which would lead to the inclusion of articles on regional disparities in the Victoria Charter were held at the Constitutional Conference in February 1971 (see Chapter 6).

F. Amending Procedure and Provisional Arrangements

The search for an acceptable amending procedure was of necessity a key segment of the constitutional review process and, accordingly, was one of the seven major items singled out by the Conference in 1968 for examination. Yet when the Continuing Committee contemplated its programme of work at its inaugural meeting in May 1968, the chairman predicted quite accurately that the amending procedure would be one of the last items to be considered in the review process, and therefore suggested that there would be little purpose in discussing the matter at that stage. The Nova Scotia delegation showed itself to be even more prescient in suggesting that the issue might more properly be considered by Attorneys General than by the C.C.O.

The Continuing Committee began its study of the amending procedure at its thirteenth meeting in November 1970 in accordance with the request received from the September 1970 Conference "to carry out a detailed investigation of the ways of amending the Constitution". In order to facilitate discussion, the federal government introduced a check-list entitled, "Constitutional Amendment Procedures" which presented some major questions arising from the consideration of an amending formula.

Observations were made relating to the questions raised in the check-list, without a detailed discussion of any particular aspect taking place. The Quebec delegation indicated it still held misgivings regarding the Fulton-Favreau formula, and questioned whether the federal government would be coming forth with a proposal for an amending formula. The federal delegation indicated that it intended to proceed in the current pattern of putting forward discussion papers.

When the Continuing Committee met again for its fourteenth and last session in January 1971, it was presented with four additional papers on the questions of the amending procedure and patriation: (a) "A Working Paper on Constitutional Amendment and the Division of Powers" from Alberta; (b) an Ontario paper entitled "Some Options on the Amendment Process in Canada"; (c) a New Brunswick memorandum on "Amendment and Patriation of the Constitution"; and (d) "Patriation of the Constitution", a discussion outline prepared by the Secretariat.

For discussion purposes, the Committee found it useful to make a distinction between questions relating to the amending formula itself, and the matter of "patriation" of the constitution, and it examined each matter briefly. With regard to the amending formula, several delegations felt that the Fulton-Favreau formula, although it had proven to

be unacceptable to Quebec, would provide a logical starting point in the search for an appropriate amending technique. Accordingly, the Quebec delegation identified for the Committee the considerations which, according to a study of the public reaction at the time, had apparently been the basis for the public objections to the formula in that province.

The possibility of delegation of powers was raised, with the Quebec delegation suggesting that, if the principle of delegation were accepted, the number of provinces employing the technique would be irrelevant, and any one province ought to be able to delegate power to or receive powers delegated by the federal government. The federal and other delegations held the view, however, that this might make delegation too easy, and lead to a chaotic distribution of powers, which would cause difficulties in terms of differing degrees of federal financial and political responsibilities from province to province. As well, it was observed that all provinces should have a say regarding any proposed delegation of powers, as each province had a real interest in the eventual disposition of the powers of the federal government.

With respect to the question of patriation, the Committee, with the aid of the Secretariat outline, discussed possibilities for an early patriation of the constitution, without waiting for the completion of a comprehensive review.

Attention was also focused on proposals put forward in the Ontario, New Brunswick and Alberta working papers. The views expressed in this regard and in the earlier discussion were summarized in the Secretariat's briefing paper presented to the February 1971 Constitutional Conference.

In closing the meeting, the chairman indicated that the Committee's discussion had served as a useful first look at the questions of amending procedure and patriation, and that First Ministers would be examining these matters further in February. He mentioned as well that the federal Minister of Justice would be visiting each of the provinces before the February Conference for the purpose of holding bilateral discussions to prepare for the consideration of this subject by First Ministers. These discussions were to result in the formulation of proposals for

an amending formula and the patriation of the constitution for examination by the February Conference, independently of the discussions that had been held in the C.C.O.

The amendment formula and patriation procedure were the subject of a preliminary agreement at the February 1971 meeting of First Ministers, with the formula subsequently being included in the Victoria Charter (see Chapter 6). No further meetings of the Continuing Committee as such were held after January, although the conclusions of the February Conference had provided for the possibility of later meetings.

Mechanisms of Federal-Provincial Relations

This subject was the seventh major question referred by the First Ministers in February 1968. When, it was first considered by the C.C.O. in May 1968, the chairman suggested that this item was quite similar in nature to the one relating to amending procedures and provisional arrangements in that it was likely to come up in connection with several other issues and for that reason should perhaps best be left until towards the end of the constitutional discussions.

The federal delegation observed that the Continuing Committee on Fiscal and Economic Matters would be willing, if requested, to make itself available as a special sub-committee of the C.C.O. to deal with the machinery of federal-provincial consultation in so far as it related to economic and fiscal issues.

The Continuing Committee of Officials was told of the report on this question being prepared for the Continuing Committee on Fiscal and Economic Matters. It was recalled that the Tax Structure Committee had been given the task of studying among other things, the intergovernmental machinery for consultation on fiscal and economic matters. In order to avoid the possibility of committing governments in advance to particular positions on this question, the Tax Structure Committee had decided to refer the matter to the Continuing Committee on Fiscal and Economic Matters which in turn had asked the federal Minister of Finance to commission a study.

Arrangements had been made for this purpose with the Institute of Intergovernmental Relations of Queen's University. Further discussion in the C.C.O., it was suggested, might await the receipt of that report.

However, some provinces had submitted propositions relating to the question of mechanisms of intergovernmental relations, and these were examined at the third meeting of the C.C.O. in September 1968. The propositions were grouped under the following basic concept: "The Constitution shall provide for institutional machinery to promote co-ordination and co-operation between the levels of government". In the general discussion of the concept, most of the basic issues which were to be reiterated when the matter became a major topic of discussion later on in the review process were raised.

The Quebec delegation observed that their proposition calling for "an annual conference of Union and member-state heads of government" would regularize a mechanism which already existed but which was subject to ad hoc decisions. Ontario expressed support for the Quebec proposition agreeing that it would be helpful to have First Ministers meet on a regular basis and that this might provide for more consistency in intergovernmental relations.

It was noted that it would probably not be possible to go beyond providing for an annual federal-provincial conference as further provisions would have the effect of "enshrining" other federal-provincial meetings, and any sort of rigidity in intergovernmental exchanges was to be avoided.

After this initial discussion the subject did not receive further serious attention until the twelfth meeting of the C.C.O. in September 1970. Mention had been made at the eighth meeting that the Queen's University study (Burns Report) was available and it was suggested that the subject of intergovernmental liaison might appropriately be placed on the agenda of the December 1969 Conference. The alternative view prevailed, however, that given the presence of other priority items, there was insufficient time for the Continuing Committee to have an adequate preparatory discussion in advance of the matter being put before First Ministers. Following the eleventh meeting of the C.C.O., the Ontario government had reopened the question, noting that the topic had been

raised at Banff by Alberta, and indicating that an Ontario paper would be available for consideration of the Committee at the next meeting. Accordingly, the subject of mechanisms of federal-provincial relations was placed on the agenda of the twelfth meeting in September 1970.

Although the federal government had also prepared a memorandum on the C.C.O. discussion of the "Mechanisms of Federal-Provincial Relations", the discussion at this twelfth meeting consisted almost entirely of an examination of the detailed proposals contained in the Ontario working paper, "The Machinery of Intergovernmental Liaison in Canada".

The Ontario paper put forward the view that there should be an explicit statement in the constitution recognizing intergovernmental consultation and co-operation as essential elements in the effective administration of the Canadian federal system. In particular, a four-part proposal suggested that the constitution should contain provisions for:

- (a) an annual conference of First Ministers,
- (b) an annual conference of Ministers of Finance,
- (c) the right of the Government of Canada or the governments of any five provinces to call additional meetings of First Ministers or Ministers of Finance or Treasurers,
- (d) the convening of other types of conferences which governments may wish to call.

The paper also contained the suggestion that a jointly supported permanent intergovernmental affairs secretariat be established to act as focal point for the distribution of information among governments and to serve the machinery of intergovernmental consultation.

While it was recognized that these proposals needed further definition and clarification, several delegations expressed their agreement with the need for improved consultative mechanisms. The Quebec delegation noted the similarity of Ontario's proposals to the Quebec propositions submitted in 1968, and

Alberta indicated that it attached great importance to the structure for federal-provincial relations.

When First Ministers met two weeks later for their September 1970 Conference, they stressed the importance of developing effective mechanisms for intergovernmental relations, and agreed that the C.C.O. should advance the examination of the subject for further consideration at the next Constitutional Conference.

In accordance with this directive, the Committee intensified its study of mechanisms at its thirteenth and fourteenth meetings, concentrating primarily on the constitutional aspects, but without overlooking the operational aspects as these were seen to have an important bearing on constitutional questions.

Again discussion centred primarily around the Ontario proposals contained in its working paper on intergovernmental liaison. However reference was also made to Alberta's "Position Paper on Intergovernmental Liaison" and its more recent "Working Paper on the Mechanisms of Federal-Provincial Relations".

On the basis of arguments raised during these discussions, Ontario agreed to modify its proposals regarding meetings of First Ministers and Finance Ministers to reduce the federal government's obligation to convene yearly conferences of First Ministers and Finance Ministers to an obligation to propose such meetings. Some delegations questioned the necessity of including this type of provision and also wondered whether the right of imposing conferences, conferred in the third part of the Ontario proposal, automatically entailed a corresponding obligation to attend.

There was general support for the inclusion in the constitution of some sort of statement establishing the importance of and the need for intergovernmental consultation, although there were differences of opinion over whether such a statement should appear in the preamble or in a specific section on mechanisms.

With regard to the operational aspects, several matters were discussed, including the definition of

consultation and the proposal for an intergovernmental secretariat.

The Alberta delegation referred to the appeal contained in its working paper for "an explicit statement in a preamble to the constitution making intergovernmental consultation necessary where it is probable one order of government will be affected significantly by the proposed actions of the other".

The Quebec delegation emphasized the importance of arriving at an accepted definition of consultation to establish when it should take place, who should consult and what matters ought to be the subject of consultation. It was noted that there was a need for greater co-operation between governments without seriously infringing the decision-making powers. The federal delegation suggested that study should also be devoted to the capacity of governments to enter into obligations with each other and to the legal implications of intergovernmental agreements.

On the subject of an intergovernmental secretariat, the Alberta delegation reiterated its government's support for Ontario's proposal. The federal delegation, however, questioned the implied notion that such a secretariat should serve virtually all intergovernmental committees. In reply, Ontario suggested that a central secretariat would not necessarily serve all committees but added that if there were other secretariats, they should be tied in to the central one.

The Continuing Committee concluded that its discussions, particularly of the operational aspects of the mechanisms for federal-provincial relations, had been of a preliminary nature, and that it would be useful to continue the study at further meetings subject to the direction of the Conference. For purposes of facilitating discussion by First Ministers at their February 1971 meeting, the revised Ontario proposals plus a summary of the C.C.O.'s deliberations were included in the Secretariat's briefing paper for submission to the Conference.

While the Continuing Committee never returned to its discussion of the mechanisms for federal-provincial relations, one segment of the Ontario

proposals, that providing for the Prime Minister of Canada to call annually a First Ministers' Conference, was eventually included in the Victoria Charter. This followed further discussions on mechanisms at the February 1971 Constitutional Conference, as well as at Victoria (see Chapter 6).

Chapter 5 - The Work of the Committees of Ministers and their Sub-Committees

This chapter will attempt to give an account of the work accomplished by the four committees of ministers and of the sub-committees on official languages and on fundamental rights. The chapter has been divided in accordance with the four main topics examined by the ministers and their officials: official languages, fundamental rights, the judiciary and the Senate.

The examination which follows will focus on the essential components of the discussions in these committees in order to identify the main thrust of their accomplishments. The composition and the general mandate of each committee and sub-committee will also be described and an assessment made regarding the work accomplished and action taken as a result.

A. Official Languages

(1) General

Consideration of the official languages issue, especially the question of the recognition of French throughout the country, was in the forefront from the first Conference of First Ministers in February 1968, and took place on two levels.

Firstly, following the decision of the First Ministers in February 1968 to entrust official languages to a "special committee", the Continuing Committee of Officials moved to establish the Sub-Committee on Official Languages at its first meeting in May 1968. At its second meeting in February 1969,

the Constitutional Conference, taking note of the state of progress of the work underway, established the Committee of Ministers on Official Languages. The work of these two bodies was to be co-ordinated. Hence their discussions will be reviewed in the chronological order of the five meetings of the Sub-Committee and the three of the Committee of Ministers.

(i) The Committee of Ministers on Official Languages

In February 1969, the First Ministers instructed the Committee of Ministers on Official Languages to study the "recommendations of the Royal Commission on Bilingualism and Biculturalism, together with reports on linguistic matters from the Continuing Committee of Officials and the Sub-Committee on Official Languages", and to "consider both the constitutional aspects of linguistic matters and the methods of implementation of language policies, including the nature of possible federal assistance for this purpose."

The Hon. Gérard Pelletier, Secretary of State, was appointed Chairman of the Committee of Ministers and head of the federal delegation. Most of the provinces east of Manitoba were represented by their Ministers of Education or Cultural Affairs, whereas the Western provinces tended to send their Attorneys General. Prince Edward Island was the only province not represented by a minister at the Committee's first two meetings. The federal government was represented by an average of ten delegates at these meetings; amongst the provinces, Ontario, Quebec, Nova Scotia, New Brunswick and Alberta were strongly represented with an average of between four and seven delegates per meeting.

(ii) The Sub-Committee on Official Languages

The Sub-Committee on Official Languages, one of the first committees to be established, exhibited two different orientations. A distinction must therefore be made between its first two meetings held in 1968 and the three later ones. In its first phase, the Sub-Committee answered only to the Continuing Committee of Officials, and its programme included the total range of issues related to the question of official languages. Its chairman, Mr. Jack S. Hodgson of the Privy Council Office, left that post in October 1968, shortly after the second meeting of the Sub-Committee, and was replaced by Mr. Jules Léger, Under Secretary of State, whose appointment coincided with the establishment of the Committee of Ministers on Official Languages chaired by Mr. Gérard Pelletier. Both chairmen, Pelletier and Léger, were to orient the discussions around their department's policies. At this time the Sub-Committee also ceased to answer to the Continuing Committee of Officials and became a service sub-committee for the Committee of Ministers, from which it received its instructions.

Apart from the federal delegation, the Sub-Committee was composed mainly of officials from provincial departments of education, often the deputy minister himself. The federal delegation was composed of officials from the Department of the Secretary of State. The provinces generally sent two, three or four representatives to each meeting, and the federal delegation varied between two and ten delegates and sometimes more.

(2) Meetings of the Committee and of the Sub-Committee on Official Languages

(i) Meeting of the Sub-Committee, July 4 and 5, 1968

At its first meeting, the Sub-Committee on Official Languages agreed that its terms of reference, as defined by the First Ministers in February 1968, were as follows:

Establishment of a special committee to examine the Report of the Royal Commission on Bilingualism and Biculturalism and the views expressed at this Conference on the Report, and on other matters relating to language rights and their effective provision in practice, and to consult on methods of implementation, including the nature of possible federal assistance, and on the form and method of constitutional amendment.

More particularly the Sub-Committee also undertook a systematic study of the fourteen recommendations contained in the first Report of the Royal Commission on Bilingualism and Biculturalism together with the methods of implementing these recommendations, including the question of financial assistance.

In the summary record of their discussions at the first meeting, which in fact constituted the Sub-Committee's report to the Continuing Committee, the members of the Sub-Committee agreed to meet again to resume their study of the constitutional amendments and possible methods of federal assistance in the implementation of the recommendations of the Royal Commission, and to study a number of other issues raised by the Commission's Report.

(ii) Meeting of the Sub-Committee, October 17 and 18, 1968

At their July meeting, the members of the Continuing Committee of Officials sent a series of proposals dealing with official languages to the Sub-Committee. At its second meeting, the Sub-Committee thus considered various proposals from the governments of Ontario, New Brunswick, Quebec, Nova Scotia and Newfoundland as well as from the federal government, which used the occasion to submit its draft statute on the official languages. There was fresh discussion on the cost of the administrative measures required to implement the recommendations of the Royal Commission on Bilingualism and Biculturalism

and the possibility of federal assistance to the provinces. The Nova Scotia delegation expressed its concern regarding the Sub-Committee's work methods, expressing the view that greater importance should be attached to the practical aspects of the implementation of the recommendations of the Royal Commission rather than considering more abstract concepts. This comment, and the favourable reception it received, was to contribute to the re-orientation of the Sub-Committee for the future.

Before adjourning, the members of the Sub-Committee prepared a report for submission to the First Ministers through the Continuing Committee of Officials. This report contained the following four appendices:

- the principal questions raised during the Sub-Committee's preliminary examination of the recommendations of the Royal Commission on Bilingualism and Piculturalism;
- the deliberations of the Sub-Committee on the proposals which the Continuing Committee had referred to it;
- an account of the discussions on technical and financial assistance for implementing the recommendations of the Royal Commission; and
- suggestions concerning the Sub-Committee's work programme.

In general, this report indicated that in the opinion of the members of the Sub-Committee, a better understanding of the problems associated with the implementation of the recommendations of the Royal Commission would be of assistance to those provinces wishing to implement programmes in this area.

The report went on to say that the Sub-Committee would resume its examination of the recommendations of the Royal Commission concerning the use of the official languages in legislative assemblies and municipal governments, together with the question of the enactment of legislation on the official languages at the provincial level. The members of the Sub-Committee would also consider further the federal government's draft statute on the official languages.

The Sub-Committee would then turn to the definition of a formula for financial assistance in implementing the recommendations of the Royal Commission, and to the study of the nature and possible methods for a constitutional amendment related to the issue of language rights although some provinces had indicated that they did not agree with amendments of this type.

In their conclusion, the members of the Sub-Committee asked to be kept informed of the conclusions of the Study Committee on the national capital region in order that they might examine the linguistic aspects related to this question and submit their recommendations to the Continuing Committee of Officials.

The Sub-Committee met briefly in December 1968 at the time of the fifth meeting of the Continuing Committee of Officials to put the final touches on its report. The final draft was subsequently submitted and accepted officially by the members of the Continuing Committee.

(iii) Meeting of the Sub-Committee, April 18, 1969

This meeting marked the turning point in the Sub-Committee's orientation. It took place after the February 1969 Constitutional Conference which had established a Committee of Ministers to study the official languages question. The Sub-Committee which was chaired by Mr. Jules Léger, Under Secretary of State, would move towards a work programme in which the emphasis was placed on the practical aspects of the official languages question. In addition, the Sub-Committee would also abandon its relationship with the Continuing Committee of Officials and redefine its role as that of a service committee for the Committee of Ministers on Official Languages.

This third meeting of the Sub-Committee on Official Languages lasted only half a day and devoted itself primarily to a survey of the overall work programme in the language field. Several delegations then informed the Sub-Committee of the progress achieved by the provinces in this area. There was also discussion of the ways in which the language programmes of the federal and provincial governments could be implemented. The members also discussed the mandate of the Committee of

Ministers on Official Languages and it was taken for granted that the Sub-Committee should support this ministerial committee. A draft agenda for the Committee of Ministers was discussed, including proposals for the implementation of language rights and a preliminary study of constitutional guarantees for language rights.

(iv) Meeting of the Committee of Ministers, May 27, 1969

The first meeting of the Committee of Ministers on Official Languages was held on May 27, 1969. The Chairman, Mr. Gérard Pelletier, had included the following items on the agenda: examination of the Committee's terms of reference, examination of the proposals of the various governments for the implementation of official language programmes, preliminary consideration of a constitutional guarantee of language rights, future work programme of the Committee of Ministers on Official Languages, examination of the terms of reference of the Sub-Committee on Official Languages and its work programme and the report to the Constitutional Conference.

The initial formulation of the terms of reference of this Committee, as set out at the second meeting of the Constitutional Conference, was amended slightly to read as follows:

- a) to study the recommendations of the Royal Commission on Bilingualism and Biculturalism, as well as reports from the Continuing Committee of Officials and its Sub-Committee on Official Languages;
- b) to consult on methods of implementation of language policies and programmes, including the nature of possible federal assistance for this purpose;
- c) to study the question of constitutional guarantee of language rights;
- d) to report to the Constitutional Conference on the outcome of its deliberations.

In general, the provinces expressed their agreement with these terms of reference, with the proviso

that attention should be given to the effects of the Royal Commission's recommendations on the provinces as well as on the federal government.

The second item on the agenda for this meeting of the Committee of Ministers was an examination of governments' proposals for the implementation of official languages policies. This question was to be one of the main topics of the Committee's deliberations, focussing on the extent of the financial assistance which the federal government was prepared to grant to the provinces for their language programmes. No agreement was reached on the issue at this meeting, partly because the federal delegation wanted more information regarding the nature and scope of the provinces' language programmes before revealing the extent of the financial assistance it was prepared to make available. For their part, many of the provinces wished to know how much the federal government would contribute before establishing their language policies. The eventual solution to this issue will be described below.

The third item on the agenda involved the preliminary consideration of a constitutional guarantee of language rights. This "preliminary consideration" did not enable major decisions to be taken on the issue, and the ensuing discussion amounted in effect to an exchange of views. A number of delegations were vehemently opposed to any attempt to include language rights in the constitution, pointing out that the provision of language guarantees was a matter for the provinces. Other delegations supported the proposal in view of the improved guarantees that such a constitutional provision would offer to French-speaking Canadians. The Chairman terminated the debate with the suggestion that the members of the Committee might first attempt to agree on a definition of language rights before examining the nature of any protection which the provinces might offer in this respect. It was also noted that it would be possible to consider this second aspect if it could be divorced, for the time being, from the constitutional aspect.

The work programme of the Committee of Ministers constituted item four on the agenda. In this respect the Chairman suggested that the Committee might meet in September and November to continue its work. Ultimately the Committee would only meet once more in 1969, on November 6. It was expected that at

that time the Committee would study the reports of the Sub-Committee regarding the recommendations in the first two volumes of the Royal Commission's Report, new proposals concerning financial and technical assistance and any form of guarantee for language rights which seemed practical.

Items 5 and 6 on the agenda did not give rise to much discussion. The first involved consideration of the terms of reference of the Sub-Committee on Official Languages and its work programme. There was general agreement that the Sub-Committee should assist the Committee of Ministers in its study of technical questions. The Chairman also suggested that the Sub-Committee might meet in July and October in order to study the recommendations contained in the second Report of the Royal Commission on Bilingualism and Biculturalism. Finally, the delegates approved an interim report to the Constitutional Conference.

It should be noted that the meeting of the Sub-Committee on Official Languages planned for July, which was to have been held in St. John's, Newfoundland, was cancelled at the last minute. This would have been the only occasion of a sub-committee meeting outside Ottawa.

(v) Meeting of the Sub-Committee, October 2 and 3, 1969

In accordance with the request of the Committee of Ministers at its first meeting, the fourth meeting of the Sub-Committee on Official Languages concentrated on an examination of the recommendations contained in the second volume of the Report of the Royal Commission on Bilingualism and Biculturalism. Since the second volume dealt with education, several provinces sent delegates from this department, including a number of deputy ministers. Invitations had also been sent to Mr. Davidson Dunton, Mr. Jean-Louis Gagnon and Mrs. Stanley Laing of the Royal Commission to explain to the members of the Sub-Committee the major principles underlying the second volume and to reply to any questions which might be raised.

After the members of the Royal Commission had completed their presentation, the Sub-Committee considered the forty-six recommendations contained in the second volume. Although the delegates were unable to comment

on all the recommendations, they nevertheless succeeded in making considerable inroads into the subject matter. On the issue of language rights, the Sub-Committee noted that the terms of reference of the Committee of Ministers established at the Constitutional Conference in February 1969 made particular mention of a study of the constitutional aspects of the official languages question. The Sub-Committee therefore decided to suggest that the Committee of Ministers might like to study at its next meeting the priority to be accorded to the various aspects of language rights, including the constitutional aspects which had been referred to it by the Constitutional Conference. The federal delegation agreed to prepare a study on the question of language rights.

Following this meeting of the Sub-Committee, the Secretariat was to prepare a report on behalf of the Sub-Committee to be submitted to the Committee of Ministers on Official Languages. This report reviewed the recommendations contained in the first volume - official languages - of the Report of the Royal Commission, noted the extent to which the various provinces had implemented these proposals and indicated each delegation's point of view. The report also reviewed the Sub-Committee's discussions on the second volume - education - of the Report of the Royal Commission.

(vi) Meeting of the Committee of Ministers, November 6, 1969

The second meeting of the Committee of Ministers on Official Languages was held on November 6, 1969. The agenda contained five items:

- a) Consideration of federal and provincial proposals for financial and technical cooperation in implementing the recommendations contained in Book II of the Report of the Royal Commission on Bilingualism and Biculturalism;
- b) Consideration of the report of the Sub-Committee on the recommendations of the Royal Commission on Bilingualism and Biculturalism;
- c) Consideration of the Sub-Committee's request for guidance concerning its work priorities;

- d) Report to the Constitutional Conference;
- e) Future Work Programme.

The main interest of this meeting of the Committee of Ministers revolved around the federal proposal for financial and technical assistance to the provinces for implementing the language policies formulated by the Royal Commission. In his opening statement to the meeting, the Chairman, Mr. Gérard Pelletier, announced that his government endorsed the recommendations contained in Book II of the Royal Commission's Report concerning the federal government's responsibilities, and that it was prepared to allocate \$50 million over a one-year period to assist in their implementation. The statement was read in the House of Commons on the same day, in view of the substantial expenditures which would be incurred. (This had been preceded on the previous day by a brief meeting of the advisors to the ministerial delegates, during which the federal government had revealed its plans.) According to Mr. Pelletier, his government's proposal was to serve as a basis for discussion; it was not intended to express a rigid position and the entire question was open to negotiation. However, the amount of money allocated by the federal government - \$50 million - indicated the extent of its commitment to this policy.

The provinces' reactions to the federal proposal were mixed. While the majority welcomed the announcement of the federal government's position on the recommendations of the Royal Commission, several delegations expressed regret that there had been a public statement in addition to the announcement to the Committee of Ministers, thus opening the question to public scrutiny before there had been any preliminary negotiations. Other criticism concerned the inadequacy of the federal government's offer, the lack of retroactivity (the programme was to start in January 1970, whereas certain provinces wished to claim grants to offset the cost of measures undertaken prior to that date), and the federal government's intrusion through the programme into education, an area of provincial jurisdiction. These criticisms and reservations were counter-balanced however by the considerable interest shown by some provinces in the federal proposal, which, they felt, would contribute significantly to the achievement of the goals set by the Royal Commission on Bilingualism and Biculturalism. It was

eventually agreed that the provinces would immediately begin bilateral or multilateral negotiations with the federal government concerning the details of the proposal. In short, the money was there - \$50 million of it - and it was now a question of deciding how it would be shared.

Other items on the agenda of the Committee of Ministers were quickly dealt with. The delegates took note of the report of the Sub-Committee on the recommendations of the Royal Commission. The Sub-Committee was then instructed to continue its study of the question of technical and financial assistance, "without omitting the constitutional aspects which might, however, be deferred until later." The Committee of Ministers also approved an interim report for submission to the First Ministers at the next meeting of the Constitutional Conference.

The last item on the agenda dealt with the work programme of the Committee of Ministers. It was decided that the prime concern in the immediate future would be the bilateral negotiations between the federal government and the provinces concerning financial assistance. A number of ministers noted, however, that bilateral and multilateral negotiations with the federal government on this subject could obscure the constitutional aspects of the language issue. In reply it was agreed that it would be artificial to divorce the examination of financial assistance from the constitutional aspects, and that it would also be necessary to undertake a definition of language rights and the kind of guarantees which could be provided for them.

(vii) Meeting of the Committee of Ministers, May 25, 1970

As had been planned, the federal government pursued its bilateral negotiations with the provinces regarding the distribution of the \$50 million for the promotion of bilingualism. As a result of these meetings, a number of governments submitted concrete proposals concerning the federal-provincial programme for co-operation on bilingualism in the area of education, at which point Mr. Pelletier decided that the time was appropriate to convene the Committee of Ministers to study these proposals. The first date suggested was April 24, 1970,

but the meeting was postponed until May 25 because of the April 29 elections in Quebec. The very full agenda could not be fully covered. The first item concerning the programme for federal-provincial co-operation, as well as item 5 - the report to the Constitutional Conference - were discussed. However, the delegates did not have the time to review the following subjects: implementation of the programme and future consultations required, the other recommendations in Book II of the Report of the Royal Commission concerning federal-provincial co-operation in the area of education, the future programme of work of the Committee of Ministers and the future role and the programme of work of the Sub-Committee.

The discussion at this third meeting of the Committee of Ministers began with an examination of well-defined and acceptable language objectives. After several comments which were concerned more with form than with substance, the Committee agreed on the following objectives:

- to ensure, in so far as it is feasible, that all Canadians have the opportunity to educate their children in the official language of their choice;
- to ensure, in so far as it is feasible, that school children in Canada are given the opportunity to learn, as a second language, the other official language of Canada.

The delegates then examined the formula submitted by the federal government for the distribution of the \$50 million allocated for bilingualism programmes. This initial formula did not meet with general approval and Mr. Pelletier agreed to modify it. The delegates were much more receptive to the new offer and they agreed to submit it to their governments for study. The Committee of Ministers also agreed in principle, subject to subsequent consultation as to the detailed application of the programme, that the grants should apply to the following areas of education:

- officially recognized and provincially supported teaching at the elementary and secondary levels;
- provincially recognized technical instruction at the secondary level;
- credit courses for adults at the primary and secondary levels;
- correspondence courses recognized by Departments of Education;
- officially recognized specialized courses for the blind and the deaf;
- post-secondary education (other than university) diploma students (e.g., CEGEP, community colleges and technical institutes).

The delegates agreed to recommend to their respective governments the adoption of this formula for a trial period of eighteen months, after which it would be re-evaluated in the light of the experience gained.

The federal government also stated its readiness to participate in the future in certain special projects in those provinces which were not as advanced in the area of education in the second language in order to help such provinces meet the objectives which had been recognized. This participation would be conditional on the availability of finances for the special projects from funds left over after the implementation of the grant programme described above.

Although forced due to lack of time to omit several of the items on the agenda, the ministers agreed, nevertheless, to instruct the Secretariat to prepare a draft report for their comments, so that a definitive report reflecting the opinions expressed by the members of the Committee of Ministers could be submitted to the First Ministers at the next meeting of the Constitutional Conference. In contrast to other meetings, the ministers issued a press release describing the events of the day, without, however, revealing the details of the formula which had been adopted in principle during their meeting.

(viii) Meeting of the Sub-Committee, April 5 and 6, 1971

Eighteen months elapsed between the fourth and fifth meetings of the Sub-Committee on Official Languages. At the fifth meeting, again chaired by Mr. Jules Léger, the delegates continued their examination of the financial implications of the recommendations contained in the second volume of the Report of the Royal Commission on Bilingualism and Biculturalism. Among other questions, they studied the subject of programmes at the university level, official minority language teacher training, language training centres and language research.

A large number of proposals concerning these questions received the approval in principle of all the members of the Sub-Committee who attended the meeting. The Chairman then pointed out that ministerial approval should be obtained as quickly as possible, and undertook to provide the members of the Sub-Committee with a tentative draft of their report to the Committee of Ministers in order that confirmation of their agreement on the proposals studied could be received.

Conclusions

This completed the activities of the Committee of Ministers and the Sub-Committee on Official Languages. Because of the turn of events following the Constitutional Conferences in February 1971 and in Victoria, these committees were not to meet again. The ministers and their officials therefore had no further opportunity to consider the important question of the constitutional guarantees to be accorded to the official languages, as requested by their terms of reference. Nevertheless, at their Victoria meeting, the First Ministers would reach agreement on a number of constitutional provisions relating to language rights (see Appendix B). The Committee of Ministers on Official Languages and its Sub-Committee had also succeeded in implementing several of the recommendations formulated by the Royal Commission with respect to bilingualism programmes.

B. Fundamental Rights

(1) General

The issue of fundamental rights, like that of the official languages, occupied the attention of the First Ministers from as early as February 1968. At that time, the Hon. Pierre Elliott Trudeau, who was then federal Minister of Justice, tried without success to have the Conference adopt a draft constitutional Charter of fundamental rights, which would have been guaranteed by the constitution. The question was subsequently studied by the Continuing Committee of Officials at its first four meetings. In a report submitted to the First Ministers in February 1969, the members of the Continuing Committee indicated that the draft constitutional guarantee of the various rights and freedoms examined by them had raised a number of practical and technical questions requiring detailed attention. The idea of creating a sub-committee for this purpose was then advanced. However, the Constitutional Conference felt that the work in this area had reached a stage where the political element should carry more weight, and the issue of fundamental rights was therefore transferred from the Continuing Committee of Officials to a new Committee of Ministers on Fundamental Rights. Several months later, this Committee established a Sub-Committee on Fundamental Rights. The Committee of Ministers met twice and the Sub-Committee five times, as follows:

- first meeting of the Committee of Ministers, May 28 and 29, 1969;
- second meeting of the Committee of Ministers, November 3 and 4, 1969;
- first meeting of the Sub-Committee, February 4, 1970;
- second meeting of the Sub-Committee, March 25, 1970;
- third meeting of the Sub-Committee, June 1 and 2, 1970;
- fourth meeting of the Sub-Committee, June 29, 1970; and
- fifth meeting of the Sub-Committee, September 28, 1970.

(2) Meetings of the Committee of Ministers on Fundamental Rights

The terms of reference of the Committee of Ministers on Fundamental Rights, as defined by the First Ministers in February 1969 and agreed upon by the members of the Committee, were as follows:

The Constitutional Conference noting the various views and the general interest that have been expressed with regard to guarantees of human rights, including those views brought before the Continuing Committee of Officials, agrees that a Committee of Ministers should be established to study all matters relating to fundamental rights, including the question of entrenchment of such rights in a constitutional charter.

The Hon. John Turner, at that time federal Minister of Justice, assumed the chairmanship of the Committee and leadership of the federal delegation. Most provinces were represented either by their Attorney General or Minister of Justice. Prince Edward Island, however, did not appoint a ministerial representative to the first meeting and was not represented at the second, and Alberta failed to send a minister to the second meeting of the Committee. The federal government, Ontario and Quebec sent the largest delegations, with an average of between five and eight delegates, followed by Nova Scotia, New Brunswick, Manitoba, Alberta and British Columbia whose delegations normally included three or four members. The other three provinces sent smaller delegations.

At its two meetings, the Committee of Ministers on Fundamental Rights deliberated on the principle of entrenchment and studied certain fundamental political and legal rights, together with the implications of entrenching them in the constitution. The ministers did not, however, discuss economic and egalitarian rights or a number of other categories of rights.

The Committee's deliberations were based largely on a proposal of the federal government detailing the type of provisions which could be included in a charter of human rights to be entrenched in the constitution. Proposals from the majority of provincial governments

were also studied. The Committee also considered two special studies, undertaken under the auspices of certain delegations, analyzing the implications of entrenchment and the experience of other countries with rights entrenched in their constitutions.

All the members of the Committee declared themselves in agreement with the goal of protecting the rights of Canadian citizens. The differences of opinion concerned the methods by which this goal might be reached. Three basic methods were put forward:

- a) the entrenchment of a charter of human rights in the Canadian constitution;
- b) the entrenchment of a limited number of fundamental rights and the protection of other rights through federal and provincial legislation, with due regard for the distribution of powers;
- c) the continuance of the system under which rights are protected by federal and provincial legislation.

The Committee also discussed the substance of rights which could be guaranteed or protected in other ways.

The discussion of fundamental rights by the Committee of Ministers will be examined under three main headings: the principle of entrenchment; political rights; and legal rights.

(i) The principle of entrenchment

Consideration of specific categories of rights was preceded by a debate on the principle of the entrenchment of fundamental rights in the constitution. The reactions of the members of the Committee of Ministers ranged from acceptance in principle through conditional acceptance to categorical opposition.

The delegations favourable to the principle of entrenchment were of the opinion that the rights of the individual should take precedence over the rights of governments. In their view, a revised constitution

which did not express fundamental rights and values would not fulfil the aspirations of the Canadian people. This statement of rights would include clear definitions and guarantee their protection. The entrenched rights would thus form a basis on which each level of government could legislate within its own areas of jurisdiction. Entrenchment would protect these rights from any ill-advised laws which governments might adopt. Since uniform standards would be established, these delegations maintained that these would contribute to national unity and have greater didactic and symbolic repercussions than ordinary legislation.

Other delegations, while accepting the principle of entrenchment for certain rights, had the following reservations:

- entrenchment should not result in a transfer of powers from one level of government to another;
- it was difficult to discuss entrenchment without prior knowledge of how powers would be distributed and without knowing which level of government would be responsible for the legislative protection of certain rights;
- the potential impact of certain specific rights could not be assessed in isolation from a formula for the amendment of the constitution which could be applied to these rights;
- it was necessary to know the limitations which would be imposed on certain rights;
- it was also necessary to know which courts would have jurisdiction over questions concerning fundamental rights.

Several delegations, including Quebec, were of the opinion that entrenchment should be studied in conjunction with the issues of the distribution of powers and the amending formula.

The delegations which opposed the principle of entrenchment, especially British Columbia, Alberta and Saskatchewan, did so on the grounds that it ran counter

to the principle of the supremacy of Parliament, claiming that under a parliamentary system, citizens already enjoyed these rights and that it was sufficient for their representatives in the legislatures to protect them. According to this view, the impact of entrenchment would be to transfer this responsibility to the courts. It was also noted that entrenchment would lock these rights into a rigid formulation which could not adapt to changing circumstances. These delegations were of the opinion that the Canadian system had functioned well without entrenchment. They stated, moreover, that there was insufficient proof that the citizens of countries where these rights were guaranteed were freer than those of countries where they were not written into the constitution.

There was considerable discussion within the Committee of Ministers concerning the impact of entrenchment on the role of the courts. Some members claimed that entrenchment would result in a transfer of responsibility for policy on fundamental rights from the legislature to the courts. This would enable judges to impose their personal values and to decide complex social issues without sufficient inquiry. This would be a substitution of the American system of judicial review for the present Canadian one. The proponents of this opinion further stated that there would then be a considerable increase in the number of time-consuming and futile cases before the courts. Entrenchment would also represent a setback for the cause of Canadian identity, as a result of reference to American legal precedents and policies. In answer to these opinions, a number of delegates expressed the view that the American experience with its bill of rights was not directly applicable to Canada because of the marked differences between the two political systems, particularly with respect to responsibility for criminal law and residual powers. The point was also made that there had always been judicial review in Canada of the rights presently included in the British North America Act, and that consequently the entrenchment of certain additional rights would not, of itself, amount to a new delegation of authority to the courts.

A number of alternative solutions to entrenchment were also put forward during the discussions of the Committee of Ministers. Mention was made, among other things, of the establishment of human rights commissions, the appointment of ombudsmen and the establishment of permanent law reform commissions.

(ii) Political rights

There was general agreement that the category of fundamental rights should include the following:

- freedom of conscience and religion;
- freedom of expression (including freedom of speech and of the press);
- freedom of assembly and association; and
- the right to free elections at maximum intervals.

The ministers were unanimous in their support of the entrenchment in the constitution of the right to hold free elections at maximum intervals of five years at both the federal and provincial levels. A number of delegations felt that the guarantee of this right would be sufficient to protect the exercise of other political freedoms without the need to entrench them in the constitution. Such a guarantee could be instituted by extending to all the provinces the present constitutional provisions in force for the House of Commons and the Ontario and Quebec legislative assemblies. It was felt, however, that this modification should not impede the power of Parliament and of the provincial legislatures to define the pattern of representation.

The discussions also revealed that the majority of delegations were prepared to approve the entrenchment of the three other political rights quoted. In some cases, this approval was dependent on the formulation of appropriate constitutional provisions as well as of other aspects of the constitution, particularly in relation to the amending formula and the distribution of powers. A number of delegates expressed the view that these three political rights were so fundamental that Canadians took them for granted, although their entrenchment in the constitution would bring them to the attention of all and help to clarify their meaning. Their entrenchment would also have an effect on private and public acts and protect minorities from certain temporary acts on the part of the majority. It would, in addition, enable the courts to study the implications of the rights in question when cases arose in this connection.

However, it was pointed out that the exercise of the rights of the individual should not infringe on the rights of others, and that it would therefore be necessary to recognize certain implicit restrictions. Certain delegations felt that a simple, general declaration would be sufficient to define the rights in the constitution, while others favoured a definition including the legal limitations found in certain international charters.

A number of ministers expressed reservations with regard to the effect the entrenchment of political rights would have on the distribution of powers. It was stated that constitutional guarantees should never constitute an indirect method of altering this distribution. It was also noted that the question of jurisdictional conflicts in the administration and application of guaranteed rights should be studied in all its aspects.

Although a majority of the delegations were prepared to approve the principle of entrenching the three above-mentioned political rights in the constitution, they did not feel that they could commit themselves to final acceptance before knowing the details of the amending formula. The flexibility of this formula would determine the ease with which changes could be made and also reflect the degree to which responsibility for the protection of fundamental rights would pass from the legislative assemblies to the courts.

In contrast to the majority view, the British Columbia, Alberta and Saskatchewan delegations expressed the opinion that the experience of other countries showed that the entrenchment of these three political rights would have no appreciable practical value. They felt that the experience of the American bill of rights, in particular, had demonstrated that entrenchment was not an effective method of solving problems concerning fundamental rights.

The Committee of Ministers agreed that the next stage of its work should include the definition in greater detail of the substance and the limitations of these three political rights. These definitions should be developed with a view to their inclusion in the constitution, in case this should subsequently be decided upon. The decision was therefore taken to

establish a Sub-Committee to conduct the preliminary studies. In addition to drafting definitions, the Sub-Committee would have to decide whether these rights should be couched in general terms or whether they should include specific limitations.

(iii) Legal rights

A list of legal rights which could be entrenched in the constitution was submitted by the federal delegation at the first meeting of the Committee of Ministers on Fundamental Rights. It was noted that these rights were taken to a large extent from the Canadian and Saskatchewan bills of rights and that the list included positive rights and rights to protection through due process. The discussion within the Committee, however, revolved principally around the need to guarantee this category of rights rather than the substance of any specific right.

A number of ministers felt that the entrenchment of legal rights constituted a concrete way of guaranteeing the equality of all Canadians before the law. It was apparent from the discussion, however, that the majority of delegations were not in favour of the entrenchment of these rights. In their view, the common law tradition already ensured an adequate degree of flexibility which might be lost by incorporating these rights into the constitution. It was also pointed out that the Criminal Code and the relevant provincial laws guaranteed sufficient legal protection to Canadians. If proof could be offered that Canadians did not at present enjoy equal protection before the law, it would be preferable in the short term to consider amending the laws in question.

The delegations which were opposed in principle to the entrenchment of legal rights in the constitution claimed that this would affect the discretionary power of the courts and alter the entire legal system. Some delegations expressed in addition the fear that entrenchment would have the effect of introducing certain inherent weaknesses of the American system of judicial review. There was also the possibility that entrenchment would enable constitutional objections to be raised in the courts to retard the progress of cases before them.

The Committee agreed, nevertheless, that it was important to clarify the meaning of certain expressions, such as "the law of the land", "the principles of fundamental justice", and "due process". The Sub-Committee was therefore requested to study the meaning and implications of the concept of due process in terms of both substance and procedure. Although the majority of the delegations were not in favour of entrenching legal rights in the constitution, the Committee of Ministers agreed that the question was worthy of further study. The Sub-Committee was therefore entrusted with the task of reconsidering whether certain legal rights should be written into the constitution or simply protected by federal and provincial legislation.

Conclusions

The Committee of Ministers on Fundamental Rights had planned to meet again in the autumn of 1970, but as a result of the events of October of that year did not do so. Ministerial consultations continued, however, within the framework of the preparations for the Victoria Constitutional Conference, at which the question of fundamental rights was to be discussed. Consultations on this issue were concluded at Victoria with the decision of the First Ministers to include a number of political rights in a constitutional charter (see Appendix B).

(3) Meetings of the Sub-Committee on Fundamental Rights

Upon its establishment at the second meeting of the Committee of Ministers on Fundamental Rights, the Sub-Committee on Fundamental Rights was entrusted, as we have seen, with three specific tasks: to define the substance and the limitations of fundamental political rights; to explore the question of whether certain legal rights should be entrenched in the constitution or simply protected by federal and provincial legislation; and to study the clauses regarding due process, establishing the distinction between substance and procedure.

The Sub-Committee was chaired by Mr. T.B. Smith of the federal Department of Justice, who was assisted by Dean Tarnopolsky of the University of Windsor acting as adviser. The provinces were predominantly represented by officials of provincial Departments of Justice and law professors. Professor D.A. Schmeiser of the University of Saskatchewan represented the governments of British Columbia, Saskatchewan and Alberta. At no time were there more than fourteen delegates. The federal government, Ontario and Quebec sent the largest number of participants with an average of two or three members each. Prince Edward Island was represented at the first two meetings only, and Newfoundland did not participate.

The following will attempt to summarize the substance of the Sub-Committee's discussions, after which a brief summary of its most important contribution, its report to the Committee of Ministers, will be given.

The first meeting of the Sub-Committee on Fundamental Rights was held in February 1970. It was essentially an organizational meeting, at which the delegates reviewed their terms of reference and agreed to prepare a briefing book on political rights to be available at their next meeting. The Secretariat agreed to assemble excerpts from the constitutions of other countries and to compile the documentation to come from delegations and other sources.

The delegates met again one month later, in March 1970. It was then proposed that the Sub-Committee examine current definitions of the substance and the limitations of political rights existing in other countries and under international conventions. This would enable an order of preference to be established for each type of text, taking into account the implications of the wording of each. It was also agreed at this meeting that a detailed report would be submitted to the Committee of Ministers on the relative value of the various formulas.

At its third meeting in June 1970, the Sub-Committee examined a draft report setting down its views and recommendations in the area of political rights.

At its fourth meeting on June 29, 1970, the Sub-Committee proposed modifications and additions to the second draft of its report to the Committee of Ministers. As expected, paragraphs were added on political bills of rights with several variations in form. In addition, the Sub-Committee concluded that the question of voting rights should be referred to the ministers for more detailed instructions before it was discussed.

The Chairman informed the delegates at the fifth meeting in September 1970 that the Sub-Committee's report was complete, and it was agreed that it should be submitted to the Committee of Ministers as quickly as possible. The delegates also considered the question of due process and legal rights; they were of the opinion that it was impossible to separate these two questions, since they appeared to approach the same issues but from different directions.

In view of the importance of the Sub-Committee's report, its main outlines should be described. The report was in two parts, the first presenting the views of the Sub-Committee on the substance and the limitations of certain fundamental political rights. The second part enumerated the various forms under which these rights might be expressed in the constitution or in a bill of fundamental rights. Since it could not assume the existence of a general agreement on entrenchment, the report limited itself to a description of the possible effects which the guaranteeing of political rights might have on the legislation currently in force. This "guarantee" was envisaged as one in which certain fundamental freedoms would be assured by constitutional provisions which could not be changed by normal legislative means. The report did not deal with the question of amending formulas, nor did it consider the distribution of legislative powers regarding fundamental freedoms. As for the way in which the political rights should be stated, the Sub-Committee's report opted for a short positive declaration, accompanied by a general limitation, in the following manner:

1. In Canada every person has the following fundamental freedoms:
 - a) freedom of thought, conscience and religion,
 - b) freedom of opinion and expression, and
 - c) freedom of peaceful assembly and of association.
2. The exercise of these freedoms may be subject only to such limitations as are prescribed by law and as are reasonably justifiable in a democratic society in the interests of national security, public safety, health or morals or the fundamental rights and freedoms of others.

Conclusions

After their report was completed in September 1970 the members of the Sub-Committee on Fundamental Rights did not meet again, mainly because the Committee of Ministers was not itself subsequently convened to redefine the Sub-Committee's terms of reference. Although it was therefore not possible for the ministers to receive the Sub-Committee's report formally, the document would be used in drafting the articles on fundamental political rights included in the Victoria Charter.

C. The Judiciary

(1) General

It will be remembered that, at the first meeting of the Constitutional Conference in February 1968, the First Ministers set themselves the task of studying

the "reform of institutions linked with federalism, including the Senate and the Supreme Court of Canada". In accordance with this decision, the Continuing Committee of Officials undertook a preliminary study of the subject, principally at its fifth meeting in December 1968. Following the submission of this Committee's report, the First Ministers decided, in February 1969, to form a Committee of Ministers on the Judiciary with the following terms of reference:

The Constitutional Conference agrees that:

- a) The Constitution should provide for the independence of the Judiciary;
- b) A Committee of Ministers should, taking into account the views and proposals of the various governments, consider further provisions concerning the Supreme Court and the Judiciary.

As had been the case with the Committee of Ministers on Fundamental Rights, the federal Minister of Justice, the Hon. John Turner, was named Chairman of this new Committee. The vast majority of his provincial colleagues were Attorneys General or Ministers of Justice. The federal delegation was again the most numerous, with an average of eight delegates per meeting. Most of the provinces sent delegations numbering between three and six members. Prince Edward Island was the only province which did not send a ministerial delegate to the Committee's first meeting.

(2) Meetings of the Committee of Ministers on the Judiciary

The first meeting of the Committee of Ministers on the Judiciary was held on May 29, 1969. This was followed by a second meeting on November 4, 1969. The following paragraphs describe the discussions at these two meetings. These discussions were followed in each case by a report to the First Ministers.

One of the main questions considered was a Quebec proposal concerning the merits of a separate constitutional court, with at least two thirds of the judges

appointed by the provincial governments, which would have the specific task of settling constitutional disputes between the federal and provincial governments. The reaction of the other delegations to this proposal was mixed. A number of delegations recognized that the proposal had a certain underlying logic once certain premises regarding Quebec's cultural and political aspirations were assumed. In this perspective many delegations expressed a desire to study the Quebec document in more detail, pointing out that they had not yet finalized their own views on the question.

Other delegations, however, while admitting the importance of the question of the Supreme Court's credibility, expressed their disagreement with the Quebec proposal, mentioning in particular the difficulty a constitutional court of this type would have in adjudicating on constitutional issues which would be thus removed from their overall context. In addition, a number of ministers felt that legal proceedings would be slowed down if cases before magistrates' courts were interrupted to await the settlement of constitutional questions, as foreseen in the Quebec submission. Several delegations also expressed the belief that a court of this type would become an arbitration board rather than a court of justice, since the judges might consider themselves representatives of the governments which had appointed them instead of impartial arbiters of the law. Finally, during discussion on other bodies which might replace a constitutional court, a number of delegations expressed the view that they were satisfied with the present arrangement for the adjudication of constitutional issues under which the Supreme Court acted as the court of final appeal on all questions. The New Brunswick delegation nevertheless proposed that the feasibility of re-organizing the Supreme Court of Canada be studied, with a division of the Court into three chambers responsible respectively for common law, civil law and constitutional law matters. The government of Manitoba suggested, in one of its proposals, the creation of a judicial committee composed of members of a reformed Senate representing the interests of both the federal government and the provinces. According to this proposal the Senate judicial committee could have original jurisdiction with respect to constitutional questions referred to it and final appellate jurisdiction on such questions from the Supreme Court of Canada.

Another important question studied by the Committee of Ministers was the appointment of judges to the Supreme Court of Canada. Several delegations expressed the opinion that certain modifications to the present system would be in order, particularly with respect to the participation of the provincial governments. One proposal was that the federal government should consult regarding these appointments with nominating commissions in each area of the country. In this context, a number of delegations expressed a common interest in a regional concept of the method of appointment. The ministers also considered the federal government's proposal that appointments of Supreme Court judges could be approved or rejected by a reformed Senate. The question of the method of these appointments would be taken up again by the First Ministers at the Victoria Conference.

Several delegations approved the principle that the jurisdiction of the Supreme Court of Canada should be written into the constitution, although it was felt that it would be difficult to do this in a detailed manner since a degree of flexibility would always be necessary in constitutional provisions of this type. One delegation, however, expressed the fear that any attempt to define the powers of the Court in the constitution would result in excessive rigidity. It was nevertheless conceded that it would be necessary for the federal government to enact legislation in which the powers of the Supreme Court would be defined within the limits prescribed by the constitutional provisions.

It was also suggested that the procedure for the appointment of judges to the Supreme Court should be laid down in the constitution. As to the number of judges, it was pointed out that if regional representation was to be increased, it would probably be necessary to increase the number of seats on the bench. Some ministers, however, indicated that this last measure would be undesirable, since if the number of judges were too large it would take more time for the Court to reach decisions.

Several delegations also declared themselves in favour of the federal government's proposal that the Supreme Court not be bound by the principle of stare decisis.

The delegates gave general approval to a proposal that the present constitutional provision concerning the independence of the judiciary be extended to cover the judges of the Supreme Court. In this context, the Committee of Ministers also agreed to study at a later meeting other possible extensions to constitutional guarantees of the independence of the judiciary.

(3) Planned third meeting of the Committee of Ministers on the Judiciary

In order to discuss in greater detail the Quebec government's proposal for the establishment of a constitutional court, as well as a number of other possible solutions, it was agreed that following the second meeting of the Committee of Ministers, all the delegations would send their comments and proposals on the subject to the Secretariat before the end of January 1970. The Secretariat was to assemble and organize these comments and circulate them to the members of the Committee before the end of February 1970. It would then be possible to consult regarding the most efficient manner of continuing the work of the Committee. Only one delegation, however, was prepared to comment on Quebec's position. The Chairman of the Committee was therefore obliged to propose a new agenda. On June 11, 1970, the Secretary of the Conference announced that the Committee would meet on August 27 (two weeks before the First Ministers' working session), with an agenda which could cover either a discussion of the Quebec proposal or other questions related to the Supreme Court. This meeting, however, would subsequently be cancelled in view of the absence of any new elements being submitted for discussion.

Conclusions

The work of the Committee of Ministers on the Judiciary was to remain suspended until the re-opening of the question of the Supreme Court of Canada during the preparatory discussions for the Victoria Conference. At this last meeting, the First Ministers were to reach agreement on constitutional provisions relating to the composition, jurisdiction and independence of the Supreme Court, as well as to the method of appointment (see Appendix B).

D. The Senate

(1) General

Being one of the seven main areas for study cited by the First Ministers at the first Conference in February 1968, the Senate, along with fundamental rights and the judiciary, was examined by the Continuing Committee of Officials prior to the appointment by the second Constitutional Conference of a Committee of Ministers to examine the issue in greater detail.

The terms of reference of the Committee of Ministers on the Senate, as laid out by the First Ministers at the February 1969 meeting and subsequently approved by the Committee, read as follows:

- a) To study possible constitutional provisions relating to the Senate taking into account in particular the following considerations:
 - The Senate could represent in a more direct and effective manner than at present, the interests of the provinces and regions of Canada;
 - This could be achieved through appropriate changes in the method of selecting Senators, and by altering the tenure of office of Senators;
 - It might be appropriate for the Senate to be provided with certain special powers in order to make it a more effective instrument of federalism, while at the same time adjusting its role in relation to legislation generally;
 - The distribution of membership should reflect in an equitable manner the provinces and regions of Canada;
 - The Government of Canada should continue to be responsible only to the House of Commons.

- b) To report to the Conference on the results of their deliberations, with appropriate recommendations.

The chairmanship of the Committee was exercised by the Hon. Otto Lang, federal Minister of State. As in the case of the two preceding ministerial committees, the tendency for provincial delegations was to be represented by either their Ministers of Justice or Attorneys General. All governments were represented at the Committee's first and only meeting, with Prince Edward Island the only delegation without a representative of ministerial rank. The federal delegation was composed of nine members, Ontario had five, Nova Scotia, New Brunswick, Quebec and Alberta four, British Columbia three, Prince Edward Island, Manitoba and Saskatchewan two each, and Newfoundland one.

(2) Meeting of the Committee of Ministers on the Senate on May 26, 1969

The only meeting of the Committee of Ministers on the Senate took place on May 26, 1969. The agenda was as follows: appointment of senators by provincial governments, term of office of senators, representation in the Senate and the responsibilities of the Senate.

During the discussion of the proposal for the appointment of senators by the provinces, two delegations rejected the principle that provincial governments should be represented in the Senate in this fashion. The other nine delegations expressed agreement with the suggestion without, however, determining the extent of this provincial participation.

Opinions were also divided on the question of a senator's term of office. Some maintained that the term of office should be long enough to interest qualified individuals who might otherwise hesitate to give up their

professions or careers, and also to permit senators to retain some independence from those who had appointed them. Others maintained that the term of office should be short enough to ensure that senators remained responsive to the interests of the government on which their appointment depended.

On the issue of representation, the question was whether seats in the Senate should be distributed on a provincial or regional basis. Discussion of this matter was concentrated on the Senate representation of the Western provinces in relation to that of the Atlantic provinces and the suggestion that British Columbia should be considered as a separate region in itself. Opinions were divided as to whether the Senate should represent regional or provincial interests, and in the latter case, whether senators should defend the policies of the governments on which their appointment depended.

There was also discussion of the Senate as a legislative body. In this respect, it was asked whether the Senate's current veto powers should be abolished, or at least reduced to a suspensive veto as in the case of the British House of Lords, in the event of provincial appointments to that body.

The Committee of Ministers then discussed the powers that were being proposed for the Senate, and in particular the approval by the Senate of federal nominations for judges of the Supreme Court, ambassadors and heads of cultural agencies. A number of delegations were in favour of this last proposal, whereas others expressed concern regarding a possible reduction of the powers of the federal government which this would entail, especially if some of the members of the Senate were appointed by the provinces. Other delegations expressed the view that certain special responsibilities should be entrusted to the Senate, including the ratification of treaties and international agreements, the power to invalidate by means of a declaration any measure to suspend the constitution taken by the federal executive in a national emergency, and the right to advise the Governor General in the exercise of his prerogative of mercy.

Conclusions

In conclusion, the accomplishments of the Committee of Ministers on the Senate might be summarized by referring to its Progress Report to the Constitutional Conference which states that a "useful exchange of views took place on the various questions and issues which would require further examination" and that members of the Committee "undertook to obtain an elaboration of the views of their respective governments concerning various questions and issues identified at the meeting".

According to the same report, the next meeting of the Committee was planned for the autumn. However on October 2, 1969, the Chairman of the Committee, Mr. Otto Lang, wrote to the head of each provincial delegation to indicate that "the pressure of other business has prevented the federal government from carrying its examination of the question of Senate reform to the point where it could put forward more detailed and explicit views". He added that the federal delegation "would not be able to elaborate significantly on its original proposals at a committee meeting held this fall". The planned meeting of the Committee of Ministers did not take place. Subsequently the Senate question did not reappear on the agenda of the constitutional meetings. The question was examined again however by the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada.

Chapter 6 - The Work of the Constitutional Conferences
(First Ministers)

Both the origin and the disposition of the substantive aspects of the constitutional review were the exclusive prerogative of the continuing Constitutional Conference of First Ministers. Part II of this paper has been designed to reflect this basic reality. Chapters 4 and 5 recounted the work of officials and ministers in response to directives received from the Conference. This chapter takes up the substantive aspects of the review when the results of their work are subsequently reported to or passed on to First Ministers for "final" consideration.

During the three and a half years of the review, First Ministers dealt with all seven of the specific subject areas identified in the conclusions of the February 1968 Constitutional Conference (see Appendix B). The sections of this chapter have been designed to cover the Conference discussions of subjects falling in each of these seven areas. However, the original sequence as established in February 1968 has been modified to reflect more accurately the priority or emphasis accorded each area by the Conference during the constitutional discussions. An eighth section has also been added to cover those subjects which were discussed by the First Ministers but which do not fall within the seven areas.

Before proceeding to the discussions of substance a number of general points might be noted with respect to the work of the First Ministers.

- (a) The full scope of the Conference discussions is not known, since, in addition to the plenary meetings there were a number of private executive sessions and dinner meetings which were usually attended only by the eleven First Ministers. Even in those cases where the Secretary was present, the reports of these private deliberations are not accessible.

- (b) All items on the agendas were not necessarily discussed as planned, nor were all discussions reflected in the conclusions of the respective Conferences.
- (c) The choice of subjects for examination was determined by First Ministers from meeting to meeting, and officials or ministers asked to undertake exploratory or preparatory work for report to the Conference. As a result most subjects were dealt with on the basis of formal reports from the Continuing Committee of Officials, ministerial committees, and the Secretariat. On a few occasions the preparation of such reports was judged to be unproductive and the officials or ministers chose to brief the First Ministers individually.
- (d) Although initially the C.C.O. chose to deal with the totality of the review by way of "propositions" and First Ministers were aware of this approach, the Conference itself never did examine the propositions nor did First Ministers base their own discussions on them, in contradistinction to later stages of the review when they made extensive use of working papers presented by individual governments and even discussion outlines prepared by the Secretariat.
- (e) First Ministers encountered difficulty in isolating the constitutional from the non-constitutional aspects of many subjects and a number of issues were dealt with in both respects.
- (f) Although the heads of a number of governments changed between 1968 and 1971, and each was given the opportunity to state his views on the constitutional review, the flow of constitutional discussions was not interrupted nor previous "agreements" called into question. The effect of such changes was usually a shift of style rather than of substance.

- (g) Some subjects were brought to their conclusion and consensus reported; others were "pigeon-holed", that is put in abeyance pending the resolution of other related subjects. No agreements were to be taken as "final" until completion of the full review. In this respect there was no discussion on what procedure should be used to obtain formal approval for agreed constitutional changes until the events leading to the Victoria Conference, when it became necessary to decide on how to give effect to the limited "package" of new constitutional provisions that would be included in the Victoria Charter.

A. Official Languages and Language Rights

When the first Constitutional Conference was called late in the summer of 1967, the original federal objective had been to discuss a constitutional bill of rights which would include a section on linguistic rights. However two events were to contribute to the expansion of the examination of language rights in this way before the Conference opened in February 1968. The first was the submission to the federal government in October 1967 of "Book I - The Official Languages" of the Report of the Royal Commission on Bilingualism and Biculturalism. There was a very positive reaction to the recommendations which was to be reflected in the federal working papers made public at the time of the Conference. The second event was the meeting of the Confederation of Tomorrow Conference held in Toronto in late November, where the role of the English and French languages in Canada was a major topic of discussion. The Premier of Quebec, Mr. Daniel Johnson, had presented a brief containing extensive references to the subject and most other Premiers took the opportunity to report what steps had been taken in their respective provinces to improve the status of the French language.

Against this background, it is not difficult to understand why the Prime Minister of Canada, in a letter sent on the day following the Confederation of Tomorrow Conference, suggested an enlargement of the original agenda for the February 1968 Conference to provide for an examination of the recommendations of the B & B Report as the first item of substance.

A significant proportion of the February Conference was devoted to the language question. Every First Minister took the opportunity in his opening statement, to refer to the subject and to report on what actions his government had taken in the fields of education and public services to improve the status of the French language. In addition, there was a general discussion on the specific agenda item, and a large part of the third day of the Conference was devoted to achieving the "Consensus on Language Rights" which would appear in the conclusions of the meeting.

Because of the heavy emphasis that had been placed on the subject in the opening statements, the main debate on languages was relatively short and revolved around the determination of whether a legislative or constitutional declaration of principle should precede or follow a planned programme of implementation for the official languages.

Having accepted the recommendations addressed to it by the B & B Commission, the federal government was hoping at this Conference to obtain:

- (a) The recognition...that...as a matter of equity, French-speaking Canadians outside of Quebec should have the same rights as English-speaking Canadians in Quebec.
- (b) Recognition...of the desirability of proceeding by governmental action as speedily as possible in ways most appropriate in each province and without diminishing existing rights and usages.
- (c) Constitutional amendments which would guarantee these rights along the lines recommended by the Royal Commission on Bilingualism and Biculturalism, to apply to the Federal Government and to the provinces that agree.
- (d) Establishment of a special committee to consult on the methods of implementation, including the nature of federal assistance to be made available and to consider the

form the constitutional amendment should take.

- (e) Agreement to consider the consolidation of constitutional guarantees in a charter of human rights when the charter has been agreed on.

These five steps were intended to focus on the main points and objectives of the discussions. Most of the provinces were prepared to accept the principles expressed in (a) and (b) although some reservations were expressed by the western provinces. There were a number of strong objections to the substance of (c) since, in particular, guarantees would necessitate a constitutional amendment which in current practice required the unanimous consent of the provinces. This procedure appeared unlikely in the short term, given western views on the matter and the fact that "opting-in" was considered to be incompatible with unanimity. The idea of establishing a special committee was generally endorsed although it was argued successfully that its terms of reference should be expanded. The proposal in (e) was considered to be premature and was dropped.

The results of these discussions were reflected in the "Consensus on Language Rights" issued at the end of the Conference (see Appendix B). If this Consensus is compared with the above five points originally proposed by the federal government, it will be seen that points (a) and (b) were retained in essentially the same form, and that (d) was expanded so that the special committee could take a wider look at the general question of language rights. Points (c) and (e) were not reflected in the Consensus.

While progress had been made, it should be noted that the Consensus was achieved in spite of very strong views expressed by the westernmost provinces. In fact, in later sessions British Columbia reminded the other delegations that the final Consensus had been reached in its absence and that it therefore did not feel necessarily bound to the document's principles. During the Conference, however, the more reserved view was articulated by the Premier of Alberta who suggested that the question of languages was a side issue, even for Quebec, which was more interested in changes being made with respect to the distribution of powers. He expressed strong objections to the

methods proposed in the B & B recommendations, contending that the constitutional or legalistic approach was neither the only nor the best approach. In his view writing language rights into the constitution would not, in itself, produce the desired results, since the latter depended on the attitudes of the population at large. Moreover, constitutional changes could have an adverse effect, notably in regions where the population was largely made up of non-English and non-French speaking Canadians. It was argued that language and culture should be matters of voluntary appreciation which did not require constitutional status.

However, these views did not prevent Alberta from accepting the Consensus as finally drafted, and the agreement emerged as the major substantive triumph of the first Constitutional Conference. In addition, the First Ministers agreed to include language rights in the list of seven subject areas to be examined by the Conference and the Continuing Committee of Officials as part of the continuing constitutional review (see Appendix B).

The official languages were again the first specific constitutional question examined at the second Constitutional Conference a year later in February 1969. By this time all the "propositions" which had been presented to the Continuing Committee had been made public, including the federal ones by way of the booklet "The Constitution and the People of Canada". In addition, the Secretariat briefing paper on the discussions of the C.C.O. had been released during the week preceding the meeting. The subject of official languages was included in all of these documents.

Although there were some references to the ideas covered in the propositions and the Secretariat paper, the First Ministers spent more time discussing the federal official languages bill which was then before Parliament, and which had also been the subject of informal bilateral consultations on the part of the federal Minister of Justice. In general, provincial governments expressed approval of the bill, with the exception of the western provinces who felt that its validity should be tested before the Supreme Court of Canada. Saskatchewan saw potentially dangerous effects on the administration of justice, while Alberta and British Columbia felt the legislation would have

a detrimental effect on the career opportunities of English-speaking Public Servants. Several provinces also wanted further consultations with the federal Minister of Justice.

Feelings were also mixed on the subject of bilingual districts. In this respect a number of governments expressed the need for consultation; others favoured a gradual expansion of the use of French rather than the introduction of compulsory legislative measures, while even others, in particular Quebec, expressed general reservations with this approach.

The federal government expressed the hope that the provinces would feel that financial assistance to linguistic minorities was a legitimate use of the federal spending power. Most provinces agreed that the federal government had a national responsibility for providing financial assistance to provinces to assist in the development of language programmes.

The Conference concluded with an acknowledgement of the important steps that had already been taken by governments and with an agreement to refer to a ministerial committee the study of both the constitutional aspects of linguistic matters and the methods of implementation of language policies, including the nature of possible federal assistance. The Continuing Committee and the Sub-Committee on Official Languages would provide assistance as required.

No discussion of official languages took place at the Constitutional Conference of June 1969. The First Ministers took note however of the progress report of the Committee of Ministers on Official Languages and agreed that it should meet again and report further before the next Constitutional Conference.

When the Constitutional Conference came to order again in December 1969, the First Ministers were presented with a second progress report from the ministerial committee which included notice that the federal government was prepared to provide \$50 million worth of assistance for the development of language programmes in the coming calendar year. There was general Conference approval of this offer and it was agreed that bilateral discussions should proceed as

quickly as possible on this federal proposal for financial and technical co-operation, after which the Sub-Committee on Official Languages or the ministerial committee could meet again if desired. Some concern however was expressed about the possible federal involvement in this way in the field of education. In reply, the federal government indicated that it had no intention of intervening in this provincial field but only wished to accept those responsibilities which had been recognized by the B & B Commission. It was also noted that discussions to date had not been of a constitutional nature, and that the constitutional implications would be discussed at a later time.

The Constitutional Conference in September 1970 received yet another progress report from the Committee of Ministers on Official Languages, this time dealing essentially with the specifics of a formula for federal assistance which would not infringe on provincial jurisdiction and which had been accepted by all governments (see Chapter 5 for discussions in the ministerial committee). It was agreed that federal-provincial consultations on this question should continue, with particular attention being given to the nature and financing of "catch-up" projects in certain provinces.

The Conference also recorded the view that substantial progress had been made toward accomplishing the objectives expressed in the Consensus on Language Rights of February 1968. The ministerial committee was asked to continue its work to review progress on the implementation of the federal proposals for assistance, and more particularly to turn its attention to the constitutional aspects of language rights. However, the ministerial committee was not to meet again, and the subject of official languages became one of those included in the bilateral consultations which were to lead to the "package" of initial measures for constitutional reform.

When the Constitutional Conference met in February 1971, it examined this "package" in which the official languages of Canada and language rights were key elements. There was general agreement that English and French should be declared the official languages of Canada. In looking at specific provisions that would have equal application in all parts of Canada and to both languages, First Ministers had

no difficulty in agreeing that any person could use English or French in such areas as Parliament, in any pleading or process in federal courts (i.e., the Supreme Court and the new Federal Court of Canada) and in communications with the federal administration, and that federal statutes and instruments should be in both languages. There was also some discussion on guaranteeing the use of both English and French in the provincial Legislatures, even though this would not impose an obligation to record debates or publish statutes in both languages. Some provinces had no difficulty with the provision, while others, notably the western provinces, felt that no such guarantee should be written into the constitution. It was argued that this guarantee was already part of a larger privilege allowing the use of any language in their provincial Legislatures, and entrenchment of the use of English and French might be taken to imply that other languages could not be used. It was pointed out, however, that a Legislature would be free to amend the provincial constitution to provide for the use of other languages in the provincial assembly. It was also indicated during these discussions on guarantees that Parliament or the Legislatures could accord further recognition to the two official languages as required.

Similarly, there was an extended discussion on the provision with respect to education whereby the individual would have the right to use English or French as his main language of instruction in publicly supported schools in areas where the language of instruction of his choice was chosen by a sufficient number of persons to justify the provision of the necessary facilities. During these discussions, some provinces expressed doubt about the desirability of entrenching the principle of language rights with respect to the field of education, pointing out that this could affect the provision of education on the basis of religion. This could add confusion and administrative difficulties. It was also suggested that a pragmatic approach taking into account the situation particular to each province would be preferable. Quebec expressed a general reservation on the main principle because of the effect it might have on education in that province if too many Quebecers opted for English language education.

At the end of their discussions, First Ministers agreed, subject to Quebec's reservation, that the

principle expressed above should be incorporated into the constitution. However this agreement would also be subject to further consideration of the appropriate administrative arrangements to implement the provision of what constituted a "sufficient number" of persons, and what the percentage of instruction in the main language should be. In addition, there was the question of determining who should have the right to choose or express the desire for such instruction - the pupil, the parent or the school board, and whether the choice of the main language of instruction should apply at the school or classroom level.

At the end of the Conference it was agreed that the federal authorities would prepare discussion drafts for implementation of the various subjects in the "package" of constitutional reforms, including official languages. These would be distributed to the provinces, then discussed in a series of bilateral encounters after which revised drafts could be circulated. Any remaining unresolved difficulties could then be examined by an informal meeting of First Ministers or Attorneys General. This procedure was to lead to the inclusion of constitutional provisions on official languages in the draft Canadian Constitutional Charter presented to the meeting of First Ministers in Victoria in June 1971.

The draft Charter examined at the Victoria Conference included some ten articles on language rights which attempted to maintain the equality of the two official languages without creating more than certain limited obligations for the provinces. They also represented an attempt to clarify the position of section 133 of the B.N.A. Act by proposing language rights which could replace that section. In the course of the discussions some deletions and additions were made and most articles were subject to some modification of style or substance.

Among the major modifications made, the following might be noted:

- a change affecting the qualification to the general declaration regarding the two official languages of Canada;
- the substitution or addition of named provinces with respect to certain articles, or the specification of named provinces

in the place of a general provincial application;

- the removal of the application to provinces of the article with respect to the right of a person to communicate in the official language of his choice with government departments and agencies located in areas where a substantial proportion of the population also has the official language of his choice;
- the deletion of the article regarding the language of instruction in publicly supported schools (in this respect the Premier of Quebec stated that he preferred that the existing constitutional situation not be changed with regard to article 133 of the B.N.A. Act).

The three westernmost provinces chose to be excluded from those provinces guaranteeing the right to use English and French in the debates in their Legislatures. With respect to the deletion of the article on language of instruction, despite general reservations expressed by Quebec and the western provinces, the federal government had pressed in February for approval of the principle of the right to have English or French as the main language of instruction in publicly supported schools on the grounds that not to do so would be to evade one of the main problems in Canada. In Victoria, some provinces indicated they would have been willing to accept this provision on the condition that it also applied to Quebec. However Mr. Bourassa gave the view that he could not bind future Quebec governments so that they would be prevented from legislating with respect to the protection of the French language in the province, and the article was dropped.

The articles on language rights, as revised, were included in the "Canadian Constitutional Charter, 1971" (see Appendix B) which was then submitted for the acceptance of all governments following the Victoria Conference. Although unanimous agreement on the Charter as a whole did not materialize, it is recognized that the section on language rights would have represented a significant advance in implementing the "Consensus on Language Rights" that had been recorded in February 1968.

B. Fundamental Rights

It had been intended that the main purpose of the first Constitutional Conference, as originally conceived, would be to consider a constitutional bill of rights. Although both the subjects of official languages and regional disparities were later added to the agenda, the federal objectives with respect to human rights continued to remain the same. In introducing the subject at the February 1968 meeting, the Prime Minister of Canada, Mr. Pearson, indicated that his government hoped to obtain agreement in principle on a constitutional bill of rights including political, legal, egalitarian and linguistic rights as set out in the federal paper "A Canadian Charter of Human Rights". He also admitted that to reach agreement on the detailed provisions, and the mode and pace of enactment of a bill of rights would not be easy and it would take time. Although the two federal papers, "Federalism for the Future" and "A Canadian Charter of Human Rights" contained references to each of the classes of rights, no specific provisions were put forward during the Conference.

At this first meeting, there was no examination of the substance of any of these rights. Rather, discussions revolved around such questions as the priority to be given to the subject and the general effects of entrenchment.

Although the federal government's view was that here was the best place to begin constitutional reform with an expression of basic social values, a number of governments did not agree. Some felt that entrenched fundamental rights should be considered as forming an integral part of a comprehensive review and could therefore not be examined in isolation from the distribution of powers and other basic reforms. One government felt that a bill of rights should be the last item to be added to a revised constitution. Others questioned the basic premise that entrenchment was the best way to protect the rights of people. Writing specific rights into the constitution would also lead to a rigidity which did not exist in the unwritten constitution.

A number of provinces were concerned with the effect of entrenched rights on the distribution of powers, particularly since the B.N.A. Act gave

jurisdiction over property and civil rights to the provinces. Despite reassurance by the federal government that it was not seeking power at the expense of the provinces and that there would be no transfer and no delegation of powers as a result of entrenchment, some provinces were apprehensive that there could be some direct or indirect encroachments into their jurisdiction, which would derogate from their authority. It was suggested however that these potential difficulties might be solved by way of a constitutional court.

With respect to the contents of the federal charter of human rights, all provinces were not prepared to consider the four classes of rights put forward in the proposal. Some provinces felt that it would be sufficient to examine only the most fundamental political rights, and that legal rights should be left to their present status. It was also argued that egalitarian rights were not of much interest, since many provincial human rights codes already covered this area, and that it had been previously agreed to deal with linguistic rights separately, at least in these initial stages.

Other points made included the suggestion that the expression of fundamental rights should go beyond a simple declaratory statement to include specific definitions, and that the problem of effective sanctions should be examined. A look at the experience of other countries might also prove valuable.

In looking at their plans for further constitutional review, the First Ministers agreed that the subject of fundamental rights would require a thorough examination. It was therefore listed in the conclusions of the February 1968 Conference as one of the seven specific items to be considered by the First Ministers and the Continuing Committee of Officials (see Appendix B).

At the second Constitutional Conference in February 1969 the First Ministers discussed the subject of fundamental rights in essentially the same way as a year earlier. They also echoed the points which had been made by the C.C.O. as reported in the Secretariat's briefing paper on their discussions in the intervening months.

With respect to its proposal for the entrenchment of rights, the federal government pointed out that the protection of individual rights in Canada remained incomplete and varied, and suggested that, with due regard to the cultural diversity of Canada, an entrenched charter would recognize those principles which unite Canadians and guarantee certain rights equally across Canada. The federal proposal aimed at restraining the powers of both levels of government so that neither could interfere with the entrenched rights of individuals.

Again the provincial governments expressed a variety of reactions to the federal proposal ranging from full support, to limited support, to definite opposition.

Some provinces expressing limited support were not prepared to extend entrenchment to any rights beyond the fundamental democratic rights. In their view, other rights could still best be protected by legislative action. Others felt that rights should be protected in provincial charters as well as in a federal charter limited to rights in its own jurisdiction. Among other points made, it was suggested that entrenchment of rights should be closely linked to the development of a constitutional court, reform of the Senate, the distribution of powers, an amending formula, and the principle of the primacy of the constitution, all subjects not yet discussed.

Provinces opposing entrenchment did so on the grounds that in the past, Legislatures had acted responsibly in the area of rights and that entrenchment was a threat to their legislative supremacy. The undesirable effects would be to give the courts the final word on issues of policy and to create rigidities and fixed positions which did not now exist. Also, the effect of any legislative restrictions would more likely apply to the provincial legislative authority.

At the close of their discussions, the First Ministers agreed that a ministerial committee should be established to study all matters relating to fundamental rights, including the question of entrenchment of such rights in a constitutional charter (see Appendix B).

At the Constitutional Conference in June 1969, there was no discussion of fundamental rights. The

First Ministers however took note of the progress report of the Committee of Ministers on Fundamental Rights (see Chapter 5 for ministerial committee discussions) and asked it to meet again and report further before the next Constitutional Conference.

The Constitutional Conference in December 1969 was presented with the second progress report from the ministerial committee. The chairman of that committee indicated to the Conference that agreement had been reached on a constitutional requirement for free and regular elections at maximum intervals. It was proposed by the Committee of Ministers on Fundamental Rights to deal with the question of political rights with more precision in its next report, and to review other fundamental rights, particularly legal rights. First Ministers agreed that the Committee should be asked to proceed as quickly as possible with its planned programme of work. There was no debate of substance.

The subject of fundamental rights was not on the agenda of the Conference in September 1970.

By the time the Conference got under way in February 1971, fundamental rights had become one of the items in the "package" of initial measures for constitutional reform which had been put forward in a series of bilateral consultations carried out by the federal Minister of Justice in the weeks preceding the meeting. In opening the discussion of this item, the Prime Minister acknowledged that the consultations had indicated there was little likelihood that agreement could be reached on entrenching egalitarian or legal rights. However, during the Sunday supper meeting preceding the opening of the Conference, there had emerged the beginnings of an agreement on the entrenchment of certain basic political rights.

During the Conference discussions, a number of governments continued to have reservations about the entrenchment of rights in general. They felt that entrenchment should not go so far as to endanger the supremacy of Parliament or the Legislatures, or to substitute judicial review for legislative authority. Nonetheless they were prepared to accept the entrenchment of the basic political rights which had been discussed. Quebec agreed with this, although it planned to examine any possible implication for civil rights generally.

As a result of their discussions, the First Ministers agreed to entrench in the constitution the following basic political rights:

- a) universal suffrage and free democratic elections at least every five years;
- b) freedom of thought, conscience and religion;
- c) freedom of opinion and expression; and
- d) freedom of peaceful assembly and association.

There was some discussion as to the value of a standard qualification which would apply to these rights. Some felt it was necessary to provide some control of these rights, while others felt that such a qualification would negate the purpose of entrenching the rights. However, it was agreed that some form of limitation could be expressed in the following terms:

The exercise of these freedoms may be subject only to such limitations as are prescribed by law and as are reasonably justifiable in a democratic society in the interests of national security, public safety, health or morals or the fundamental rights and freedoms of others.

It was understood that the final wording of these rights would be considered at the next meeting of the Conference in June. As in the case of official languages, drafts of constitutional articles would be prepared by the federal government, circulated to the provinces by the Secretariat, discussed in bilateral meetings, examined at informal meetings by officials and then by Attorneys General, and the results put in the form of a draft Canadian Constitutional Charter for the consideration of First Ministers in June.

The draft Charter examined at the Victoria Conference included nine articles on political rights which expanded on the general agreement that had been reached the previous February. The majority of contentious points appeared to have been ironed out in advance of the Conference, for relatively little time was spent in Victoria discussing this subject. Although some provinces had remained unconvinced of

the value of entrenchment of political rights, they indicated that they would accept the provisions reluctantly in order to accommodate other delegations. Only one change was made in the articles proposed; the provision permitting the continuation of a provincial legislative assembly in time of war, invasion or insurrection was modified so that it would operate whenever the Government of Canada declared these circumstances to exist.

The agreement thus achieved only went part way in meeting the original federal objective of a wide-ranging constitutional bill of rights. On the other hand the texts approved were intended to enshrine in the constitution those guarantees of parliamentary practice which many provinces considered of equal, if not greater, importance.

The articles on fundamental rights were included in the Victoria Charter and suffered the same fate as the other proposed constitutional provisions when the Charter failed to gain the unanimous acceptance of all governments. (For text of the Charter, see Appendix B.)

C. Regional Disparities

The subject of regional disparities was discussed at the first Constitutional Conference because it had been a major theme to emerge from the Confederation of Tomorrow Conference. When the provinces were invited to propose other topics for the Conference in February 1968, Nova Scotia asked that the question of regional disparities be added to the agenda.

As it had been his request, the Premier of Nova Scotia was given the opportunity to introduce the subject. It was his view that the subject of regional economic disparities was a problem as equally worthy of discussion as the cultural and linguistic problems also being examined. There were two aspects to regional disparities:

- the supply of public services; and
- the economic development of the Atlantic region as a whole in the private sector.

Citing a variety of reasons for the continuation of this problem, it was suggested by Nova Scotia that current national policies had proven to be better for some regions of Canada than others. As a start to greater regional balance, it was hoped that new national policies would be implemented which would be regional in application and massive in financial terms.

In general, the other participants agreed that regional disparities was one of the principal aspects of the total problem of Canadian unity, that it had been a divisive force, and was worthy of consideration. However, some provinces felt the problem was one which went beyond the Atlantic region and that regional problems often transcended the political boundaries of the country. Within this larger context, it was agreed that the objectives of federalism should include the provision of an adequate standard of living for all Canadians, as well as the equality of opportunities and relatively equal standards of national public services.

There was general agreement on the need for the federal government to have the power and financial resources to deal with the problem of regional disparities, although there was some criticism of existing national policies. Some felt that the current federal global approach tended too much toward uniformity rather than flexibility. Others suggested that most federal help was either too little or too late. The view was also expressed that help to disadvantaged regions should not be at the expense of encouragement to high growth regions. In addition, there was some discussion on the role of equalization payments and shared-cost programmes in the reduction of regional disparities. Some specific suggestions were made but not discussed at any length. There was a general call for more co-ordination of federal and provincial policies as well as for greater federal-provincial consultation.

All the participants were prepared to look at the problem of regional disparities in terms of both current solutions and long range constitutional reforms. It was also agreed that the Conference should accord this subject high priority. As a result, the First Ministers decided to include regional disparities in the list of seven specific questions

to be further examined by the Conference and the Continuing Committee of Officials (see Appendix B).

Regional disparities was discussed again at some length at the second Constitutional Conference. Many of the points made a year earlier were repeated in February 1969. Again emphasis was put on the importance of a national commitment to alleviate disparities. The conclusions of the Conference were to reflect this feeling in reporting agreement that the promotion of the full development of all parts of Canada was an essential objective of Confederation.

On the practical side it was suggested that the fiscal capacities of both the federal and provincial governments should be brought in line with their responsibilities. The view was expressed that without limiting the federal powers, the provinces also needed the fiscal capacity to provide services. British Columbia, for its part, proposed that the equalization of the revenues of individuals should be effected by way of a guaranteed annual income rather than by federal contributions to the revenues of provincial governments. Other governments expressed support for the principle of equalization payments although it was suggested that equalization should not be hidden in shared-cost programmes. The need for greater federal-provincial consultation and co-ordination was reiterated.

It was agreed that a ministerial committee should be established to consider the administrative, financial and consultative arrangements for policies and programmes required immediately to reduce regional disparities. In accordance with the Conference discussions where it had been proposed that the constitution should deal with the general problem of regional disparity and also make specific provision for equalization payments, the Continuing Committee was also asked to give special attention to the constitutional aspects of regional disparities with a view to reporting to the ministerial committee as soon as possible.

When the Constitutional Conference met in June 1969, one of the items on the agenda was the constitutional aspects of regional disparities. There was no report from the C.C.O., but it was assumed that First Ministers had been briefed by their representatives on that Committee.

First Ministers agreed that the objective of reducing disparities across the country should be written into the preamble of a revised constitution as a basic goal of the Canadian people. Some delegations felt that the constitution should also impose on the federal government a specific obligation to alleviate disparities. However, others questioned the practicability of trying to express such an obligation in the constitution. British Columbia reiterated its view that the first approach should be for the government to provide a guaranteed annual income to individuals by means of a negative income tax. It was generally agreed that the whole question would have to be resolved in the context of the distribution of powers where it would be possible to determine what powers both the federal and provincial governments would require to enable them to work toward the objective of reducing disparities. However, it was felt that officials could in the meantime undertake an examination of the implications and problems in providing some kind of specific constitutional obligation.

The First Ministers also received the progress report of the Committee of Ministers on Regional Disparities which had held its first (and only) meeting on the day preceding the Conference, and a brief statement on the plans of the new federal Department of Regional Economic Expansion was presented by its minister, the Hon. Jean Marchand.

At the Constitutional Conference in December 1969, First Ministers discussed regional disparities following an examination of several key aspects of the distribution of powers. To assist them in their task, they had before them the Secretariat's briefing paper on previous deliberations within the C.C.O. which included a section on regional disparities.

The Conference reiterated its earlier agreement that the objective of reducing disparities across the country should be written into the preamble of a revised constitution as a basic goal of the Canadian people. Opinions were divided on whether it would be feasible or realistic also to include a substantive provision in the operative section of the constitution which would set forth the obligations of the federal and provincial governments related to regional disparities. There was some discussion on how to

ensure this through a moral obligation not subject to judicial review, as was done in the Indian constitution. Given the significance of the legal questions raised, the Conference agreed that the Continuing Committee of Officials should give further study to the implications of placing specific clauses in the constitution.

There was also some discussion of the distribution of powers as related to regional disparities. All participants, except British Columbia and Alberta who favoured the guaranteed annual income approach, agreed that the federal government should have the power to alleviate regional disparities in relation to the income of individuals and to the inequality of economic development and standards of public services. There was also support for maintaining the federal capacity to tax and spend, especially by way of unconditional and conditional grants to provinces and income support and income insurance payments to individuals, to alleviate disparities at the provincial and personal income levels.

A number of provinces also took the opportunity to comment on the inequalities at both ends of the country which in their view were built into the freight rate structure.

At the Constitutional Conference in September 1970 First Ministers examined the final report of the C.C.O. on a constitutional obligation to reduce regional disparities. The general conclusion of this report was that the legal implications of the various forms of non-enforceable constitutional clauses which had been examined would be approximately the same, although clauses in the main body of the constitution might have stronger moral force because of their location and greater detail.

Having received this report, First Ministers agreed that they had completed the main phase of their examination of regional disparities and that the agreements reached should now be reserved until the drafting stage of the review.

The conclusions of this Conference record the unanimous agreement that one of the foremost purposes of the country was to ensure the alleviation of regional disparities, and that the objective of

reducing disparities should be expressed in the preamble of a revised constitution as a basic goal of Canadians (see Appendix B). It also was agreed, with British Columbia dissenting, that the constitution should contain, in addition, a statement of the moral obligation of both the federal and provincial governments to take appropriate action for the purpose of realizing this objective. Finally, the requirements for meeting this objective by both orders of government would be kept in mind during the continuing examination of the distribution of powers.

The Constitutional Conference in February 1971 reiterated the conclusions of the September meeting that the reduction of regional disparities should be referred to both in a new preamble and in the body of the constitution.

The preamble should state that one objective of Confederation was the social, economic and cultural development and the general welfare and equality of opportunity for all citizens in whatever region they might live.

The statement proposed for the body of the constitution was also agreed upon and carried over to the draft Charter examined by the June Conference. It need only be noted here that British Columbia agreed to accept the statement following an adjustment in the sub-paragraph dealing with essential public services.

The draft Charter examined at the Victoria Conference in June 1971 contained three alternative preambles, all with references to the alleviation of regional disparities, and a section on regional disparities consisting of two articles.

It will be recalled that First Ministers were unable to agree on a preamble and consequently, the Charter made public at the end of the Victoria Conference did not contain any preambular reference to regional disparities. The articles on this subject, however, were retained with only two minor revisions, and included in the Victoria Charter (see Appendix B).

The Distribution of Powers

The distribution of powers is one of the subjects which First Ministers had no difficulty in agreeing to examine during the constitutional review. None failed to mention the matter in their opening remarks at the first Constitutional Conference and it was included in the list of subjects specified for further study in the conclusions of that Conference. Even at this initial stage it was clear however that governments were interested primarily in the taxing and spending powers, including in particular the problems of equalization payments and shared-cost programmes.

During this first Conference, as well as at the second Constitutional Conference in 1969, the subject of the distribution of powers was discussed in general terms, with a number of themes emerging which were to influence later discussions on specific aspects of the overall question. The most frequently repeated of these was the need to ensure both strong central and provincial governments, each of which should be capable of carrying out its responsibilities. Another theme was that the relationship between responsibilities and sources of revenue was out of balance and should be more clearly expressed in the constitution, as well as the principle of delegation. Finally, many provinces called for greater consultation between the federal government and the provinces with respect to a number of aspects of the distribution of powers, including shared-cost programmes and fiscal and economic responsibilities.

Between June 1969 and June 1971 the First Ministers examined seven aspects of the distribution of powers and each of these will be described below. They are presented in the order in which they were discussed by the Conference.

(1) The taxing power

It was at the second Constitutional Conference in February 1969 that First Ministers agreed to study the distribution of powers as a priority and directed the Continuing Committee of Officials to give its immediate attention to the taxing and spending powers of the constitution. Because of the urgency of the matter, the Tax Structure Committee was also asked to take up some current aspects of the question and to report at the earliest opportunity.

Between February and June 1969, the C.C.O. looked at the taxing power on two separate occasions on the basis of a federal working paper, an Ontario paper, and the propositions tabled by several governments (see Chapter 4). These documents were submitted to the Constitutional Conference in June 1969, with the federal and Ontario papers modified to take into account comments made or changes proposed during the Committee's discussions. There was however no formal report from the Continuing Committee or the Secretariat, the briefing of First Ministers on the discussion being left to their representatives on the C.C.O.

The discussion during this Conference focused on the federal proposals and in particular "the principle of access". First Ministers agreed, with one exception, to this principle whereby Parliament and the provincial Legislatures would generally have access to all tax fields, the power of Parliament applying across the country and the power of each provincial Legislature extending within the province. In applying this principle, it was also agreed however that the taxing powers of both Parliament and the provinces should be limited so as to avoid the erection of "tax barriers" to interprovincial trade and that Parliament alone should have the power to impose customs duties. In addition, the limitation of provincial taxing powers to "within the province" should generally be applied with respect to both direct and indirect taxes in order to protect the taxpayer from the taxation of his income, property or purchases by more than one province. Moreover, because both orders of government would have access to the same sources of revenue, it was recognized that there should be more regular and adequate federal-provincial consultations. Finally, since the principle of access would not enable all provinces equally to raise the revenues necessary to discharge their constitutional responsibilities, it was also recognized by all delegations, except one, that Parliament should continue to have the power to make equalization payments to provincial governments, a power which it was suggested could be stated explicitly in the constitution.

Some delegations made the point that while the principle of access was acceptable, their real interest lay in discussing how the revenues from each field should be shared between the two orders of government.

On this point, it was suggested that the topic of tax revenue sharing was not directly related to the constitutional review and would therefore be better considered in the Tax Structure Committee or in the Committee of Finance Ministers. Although this examination could proceed concurrently with the review of the constitutional aspects of the tax question, it was important to maintain a distinction between the two types of discussion; the tax sharing question was a matter for intergovernmental negotiation regarding the actual use of taxing powers by the governments of the day, while the constitutional discussions were concerned with the powers that governments should have on a continuing basis to levy taxes.

The delegation arguing against the principle of access and advocating a specific division of tax fields was British Columbia. The province had already put forward its position at the first Constitutional Conference and had reiterated its approach at the second Conference the previous February. Again in June, Mr. Bennett proposed that the direct tax fields of personal and corporate income taxes and succession or estate taxes should be assigned exclusively to the provinces and that:

- the spending power of the federal government should be restricted to matters under federal jurisdiction;
- equalization payments to provincial governments should cease, and be replaced by a guaranteed annual income plan for individual Canadians; and
- the federal government should have access to such revenues from the direct tax fields as would be necessary for it to finance the guaranteed annual income plan.

This proposal was not supported by other governments and a number of objections were expressed, especially regarding its approach to equalization. The delegations advocating the principle of access agreed that there was no need to change the present constitutional arrangements regarding personal income tax, corporation income tax, and other taxes on business, and that the present administrative

arrangements protecting the individual from double taxation should be continued.

Because of their importance as a source of municipal revenue, there was a discussion as to whether or not real property taxes should be excepted from the principle of access and assigned exclusively to the provincial jurisdiction. It was argued successfully however that these taxes should not be excepted, but that the federal government should continue to stay out of this field despite its constitutional power to enter it.

A number of proposals were also examined with respect to the question of death duties. One was that both orders of government should continue to have access to such duties and that the power to levy indirect taxes on estates should be extended to the provinces. Another was that the provinces should have the exclusive right to levy both succession duties and estate taxes. A third proposal was that the federal government should have exclusive jurisdiction. One delegation felt it could not express a view until it saw the federal position concerning capital gains taxes in the then forthcoming White Paper on tax reform. At the end, it was agreed that a special sub-committee of the C.C.O. should be created to examine the advantages and disadvantages of the various possibilities for handling death duties in the constitution.

The First Ministers also discussed the proposal that the principle of access be applied to the taxation of transactions in a way that would give provincial governments the power to levy indirect taxes in this field on the condition that the effects of such taxes would apply only within the borders of the province levying them. Some delegations argued that a constitutional restriction on the principle of access was not necessary to ensure this. Others felt that the best approach would be to restrict this new provincial power to indirect taxes on retail sales or at the manufacturer's level with exports exempted. It was agreed that there should be further exploration of alternative ways of ensuring that indirect provincial sales taxes would apply only within the province levying them. This task was given to the C.C.O. which created a special sub-committee to consider the matter.

Discussions on taxation at the Constitutional Conference in December 1969 were short and amounted essentially to a reiteration before the public of the points that had been made during the June Conference. British Columbia called for a single organization to collect all taxes in shared tax fields and for a sharing of revenues derived from tariffs levied on goods from foreign countries. Manitoba advocated a national tax structure to minimize variations in the rate base and in administration. Since the two C.C.O. sub-committees had not yet reported, no attempt was made to advance the discussions in the areas which had been assigned to them. The First Ministers agreed that the C.C.O. and the sub-committees should continue with the work in progress.

It was at the Conference in September 1970 that the Continuing Committee presented the reports from its two sub-committees along with its own comments on the questions examined. With respect to sales taxes, the Conference took note of the fact that officials had been unable to reach a consensus on how to prevent a provincial indirect sales tax from being passed on to buyers outside the province. The officials had looked at three alternative approaches and although one had been favoured, consensus had been unachievable. A wide variety of views were also expressed by First Ministers and no attempt was made to reach agreement on this problem at that stage of the review.

The same approach was taken to the question of death duties. Officials had been unable to reach consensus regarding whether jurisdiction in this field should be concurrent or exclusive. First Ministers also held differing views and no attempt was made to reach agreement at that stage. (While the constitutional issue has remained unresolved, it should be noted that the federal government has decided to withdraw from the estate tax field as of the end of 1971.)

The Conference agreed that the reports on sales taxes and death duties would be taken into account at an appropriate later stage in the review. However this meeting was to mark the end of the constitutional discussions on the taxing powers.

(2) The spending power

On the basis of the conclusions of the second Constitutional Conference in February 1969, the spending power was to be examined concurrently with the taxing powers. Both subjects were dealt with in essentially the same way. As in the case of the taxing powers, the spending power was to be given immediate attention by the Continuing Committee in preparation for the next meeting of First Ministers. The C.C.O. discussed the spending power at meetings in April and May 1969 and officials were left to report directly to their individual governments on these deliberations in preparation for the forthcoming Conference.

When the Constitutional Conference met in June 1969 First Ministers had before them a federal working paper entitled "Federal-Provincial Grants and the Spending Power of Parliament", an Ontario response entitled "The Ontario Position on the Spending Power", as well as propositions presented by various governments, all of which had already been reviewed by the C.C.O. (see Chapter 4).

It was observed, by way of introduction, that there had been to date no constitutional restraint on the spending power of the Parliament of Canada, but that the federal government was prepared to discuss a possible limitation on the use of this power so that in the future it could not unilaterally influence priorities in areas of exclusive provincial jurisdiction through the use of conditional grants to provinces. The federal working paper defined the spending power as "the power of Parliament to make payments to people or institutions or governments for purposes on which it Parliament does not necessarily have the power to legislate".

Most First Ministers agreed to the principle that the present power of Parliament to make payments to individuals or to institutions should not be subjected to any constitutional limitations. However, it was noted that some definition of and/or differentiation of institutions might be required so that, for example, direct federal grants to municipalities could be excluded. This agreement was based on the view that the federal government should be able to redistribute income among individual Canadians, and that having the power to tax individuals it should, at the same time, have the power to make payments to individuals. Some provinces were of the

view that this power should, in practice, be exercised in consultation with the provinces. One delegation suggested that Parliament should have the power to make payments to individuals or institutions only in respect of functions explicitly assigned to federal jurisdiction by the constitution. Another delegation reserved its position until the complete question of the redistribution of powers had been dealt with.

There was general agreement that there should be no constitutional limitation on the federal authority to make unconditional grants to provincial governments. It was accepted by most delegations that this power was necessary to achieve relative equality in the level of provincial public services (equalization) and for the purposes of revenue stabilization. One province suggested however that it would be possible to dispense with unconditional transfers if the government of Canada were to establish a negative income tax plan.

As for conditional grants to provincial governments, it was generally agreed that the Parliament of Canada should continue to have the power to make these grants provided there could be developed:

- a satisfactory formula for determining when there was a national consensus in favour of a particular programme; and
- a satisfactory formula for compensation in non-participating provinces.

The bulk of the discussions on the spending power at this June Conference revolved around these two points, and the proposals put forward in the federal working paper with respect to each proved to be controversial.

The federal proposal for the determination of the existence of a consensus on a proposed new shared-cost programme was based on a reference to the four Senate divisions provided in the constitution. An affirmative vote in the Legislatures (or in a majority of Legislatures) in a majority of divisions would represent the consensus required to establish a programme. This gave rise to a discussion of the mechanics of the formula as well as of the principles underlying the use of conditional grants.

There was wide criticism of the use of the Senate divisions, especially since the future of the Senate under a revised constitution still remained to be determined. Ontario proposed an alternative formula whereby the approval of seven out of ten provinces, containing at least 60% of the country's population would be required. It was also remarked that the amending formula, as of then undeveloped, might provide the basis for determining a consensus. Some delegations expressed concern that the formula agreed upon should not have the effect of giving a veto in respect of shared-cost proposals to any one section of the country. In the end, it was agreed that Parliament and the provincial Legislatures would be the appropriate bodies to determine whether a national consensus existed and the C.C.O. was asked to look again at alternative formulae in this regard.

During the discussion, doubt was expressed as to whether the federal power to make conditional grants should be exercised at all in areas of exclusive provincial jurisdiction, because of the effect this could have on determining priorities within the provinces. In response, it was observed that the provincial participation in approving or rejecting a proposal and the possibility of non-participation even when a national consensus had been established argued against this view. Moreover, it was felt that it would not be in the interests of the country to exclude the possibility of using the federal spending power in this way when there was a consensus favouring such action. The suggestion was made that if a clear-cut distribution of powers was established, there would be no need for federal participation in areas of provincial jurisdiction.

As for the question of compensation in non-participating provinces, wide differences of view were expressed concerning the best method that could be used. Although it was suggested that the federal taxes required to finance the federal portion of a programme should not be collected in non-participating provinces, the main discussion concerned the alternative ways of making payments, either to individuals in or to the governments of the non-participating provinces. The federal proposal was that payments should be made to individuals, which would meet the "no taxation without benefit" argument. This was held to be compatible with the principle that once the decision had been made by a province

to reject a proposed programme, it ought not to be expected, or expect, to participate in any way. Hence, it would remain for Parliament to return to its taxpayers in that province an amount which would bear some relationship to the taxes they would have contributed toward the programme, or the amount they would have received through the programme had their provincial government decided to participate.

Some delegations argued that it would be less efficient to send payments to individuals than to transfer a fiscal equivalent of the taxes collected in a non-participating province to the provincial government which could then return the benefit to the people through increased services or through decreased taxes or through devices such as special grants to municipalities. It was also observed that since the federal government could not return the specific payments made by each individual taxpayer, the federal proposal would still have an effect in non-participating provinces since there would be some alteration of the tax base which could make it more difficult for provincial governments to use certain tax fields for their own priorities. Those opposing this approach pointed out that a procedure for paying provincial governments could act as a strong disincentive to participation in shared-cost programmes; provincial governments would be tempted to reward themselves financially by staying out of a programme, and the consensus formula would no longer be a true measurement.

It was generally agreed by the First Ministers that there should be no fiscal penalty upon the people of non-participating provinces and that the various methods for achieving this would be discussed at future meetings.

At the Constitutional Conference in December 1969, First Ministers had before them a Secretariat briefing paper reporting on the C.C.O. discussions regarding both the determination of a national consensus and compensation in non-participating provinces (see Chapter 4 for C.C.O. discussions). Only these two points were examined at this open meeting.

Most First Ministers agreed that the constitution ought to require the determination of a national consensus, on a regional basis, before Parliament

could enact new and general shared-cost programmes in areas of provincial jurisdiction. There was considerable support for a British Columbia proposal which called for a formula based on five economic regions (as opposed to 4 as in the federal plan), with British Columbia as the fifth region, whereby consensus would exist with the agreement of three regions out of five having a majority of the population. Nova Scotia suggested agreement by a majority of the provinces with a majority of the population. Manitoba and New Brunswick spoke against a fixed and mathematical formula, favouring instead an obligation to consult which would mean that the federal government would be free to proceed even if no general agreement was forthcoming as a result of such consultations.

Opinions continued to be divided on the matter of compensation in non-participating provinces. Three different views continued to be held as to how a fiscal penalty could be avoided:

- (a) the individuals in non-participating provinces would be compensated in an amount which in the aggregate would equal the per capita federal payments to participating provinces;
- (b) the governments of non-participating provinces would receive unconditional grants equal to the conditional grants they would have received had they agreed to participate in the federal-provincial programme;
- (c) taxes imposed by the federal government for the purpose of financing a particular shared-cost programme would not be levied in a non-participating province.

A number of provinces considered either (b) or (c) to be acceptable. However, it was agreed by the Conference to defer discussion of this question until other aspects of the distribution of powers had been considered.

During the above discussions Manitoba presented a paper calling for a system of "priority option grants". It was argued that there was no need for uniformity between the federal government and the

provinces on all matters, and that regional needs varied. Under the proposed Manitoba system, a province could choose from a number of shared-cost programmes which were considered to be in the national interest and receive from the federal government its allocation from a total budgetary commitment. The federal government would retain its right to exercise its spending power in the national interest, while the provincial governments would have more flexibility of selection and timing within an established framework of shared-cost programmes. Newfoundland expressed interest in the proposal. However the federal government suggested that this system would be difficult to apply in respect of programmes which were intended to be national in scope, and that arrangements to meet regional needs might better be made on a bilateral basis.

The December 1969 Constitutional Conference marked the end of the discussions on the spending power. Neither the taxing powers nor the spending power were to form part of the "package" of constitutional questions examined subsequently in Victoria.

(3) Income security and social services, including social policy

While the subject of income security and social services and that of social policy were discussed consecutively, in substantive terms these subjects proved to be interconnected or to overlap. In the first phase the discussions were led by the federal government, whereas in the second they focused on the issue as raised by Quebec. The following paragraphs outline the sequence of the complete debate in this area from December 1969 to the Victoria Conference and the Charter in June 1971.

Before taking up the subject as part of the agenda of a Constitutional Conference, it might be recalled here that the Premier of Quebec had already called for provincial control of social security at the Federal-Provincial Conference in September 1966, at the Confederation of Tomorrow Conference in 1967, and at the first Constitutional Conference in February 1968. This position was repeated in the Quebec propositions made public in the fall of 1968. Despite the province's strong views on the priority of this subject, it did not come before the First Ministers

until the Constitutional Conference in December 1969 when a federal paper was ready for examination.

When the first Working Session adjourned in June 1969, it did not include any agreement on a future programme of work. Subsequently, in writing to all governments suggesting such a programme, the Chairman proposed that the subjects of income redistribution and social security might follow naturally upon the First Ministers' previous discussions on the taxing and spending powers. He also suggested that the C.C.O. should take up this subject at the first opportunity (see Chapter 4 for discussions by the officials).

When the Constitutional Conference convened in December 1969, First Ministers had before them federal proposals as set out in a working paper entitled "Income Security and Social Services", which was later published. Although the C.C.O. had examined this paper in a preliminary way at its meeting preceding the Conference, no committee report was presented.

Before looking at the details of the federal proposal a number of general remarks were made. Ontario maintained that before arriving at constitutional positions it was necessary to fully discuss basic principles and long term objectives. Comments were made calling for agreement on the definition of terms, for greater co-operation and consultation, as well as for a re-examination of the relationship between the two orders of government and an assurance that any change in this area would not impair the federal spending power. British Columbia felt that it would be premature to look at the federal proposals before a study had been made on the alternative of a guaranteed annual income plan through the use of a negative income tax. Quebec reiterated its preference for a greater decentralization of powers where social security, including all social allowances, old age pensions, family allowances, health and hospitals, manpower placement and training would be allocated to the provinces not only for practical administrative reasons, but also for cultural ones. Moreover, Quebec felt that the federal proposals downgraded the provinces and would take away some of the powers they now possessed.

Despite these basic differences, discussions during the Conference were carried out under the following categories suggested in the federal proposal - income support, income insurance, and social services.

The first federal proposal was that Parliament and the provincial Legislatures should continue to have equal powers to make general income support payments to persons. There was considerable support for the proposal. Ontario's agreement was subject to a number of reservations. Quebec felt that federal policy on the redistribution of wealth should be achieved mainly through equalization payments for which income support powers would not be required.

The second federal proposal was that Parliament and the provincial Legislatures ought to have concurrent powers in respect of public income insurance matters, with the following exceptions:

- unemployment insurance should continue to be a matter of exclusive federal jurisdiction;
- workmen's compensation should continue to be a matter of exclusive provincial jurisdiction; and
- retirement insurance should continue to be a matter of concurrent jurisdiction, but with federal powers being paramount.

In order to ensure portability with respect to pension plans, the federal government was of the view that the arrangement provided for in section 94A of the B.N.A. Act should be reversed.

The discussion in this case concentrated essentially on the third exception to the proposal regarding public retirement insurance. Doubt was expressed that federal paramountcy was required or desirable for the reasons given. Some preferred provincial paramountcy while others felt intergovernmental agreements would be adequate to ensure mobility and portability. There were also some differences of views regarding the meaning of paramountcy. It was agreed that the Continuing Committee should undertake a detailed examination of the application of the concept of paramountcy,

federal or provincial, in the field of public retirement insurance.

In the third area, the federal government proposed that provincial Legislatures ought to continue to have exclusive jurisdiction over social services. There should, however, be some federal power to ensure portability of benefits, and to ensure minimum standards in all provinces. This would include the power to compensate those provinces which carried an additional burden because they were receiving more citizens than the number moving to other provinces. To achieve these purposes, it was proposed that the federal government should be able to continue to use its spending power, subject to conditions to be defined, to make conditional grants to provincial governments in respect of the above services, to ensure that national standards were achieved by all the provinces. This proposal received general acceptance, although some provinces felt that concurrent jurisdiction should be considered. It was also suggested that the federal government might be downplaying its responsibilities, given the importance of national minimum standards for social services.

The question was raised by Quebec as to whether federal manpower programmes had components which were essentially social services and therefore should be under provincial jurisdiction. The federal government maintained that manpower services were an essential part of the general economic powers, and therefore should remain under federal jurisdiction. It was suggested that such services should be considered further when the subject of economic powers was brought forward. At the same time, it was agreed that the appropriate federal and provincial ministers should examine whether the needs of the country could be more effectively met if the social aspects of manpower services were carried out by the provinces.

In accordance with its mandate, the C.C.O. examined the question of paramountcy as applied to public retirement insurance at three meetings, presenting a progress report to the Constitutional Conference in September 1970 which indicated that new suggestions for alternative approaches had come forward only recently, and that it was therefore proposed by the Committee to continue the examination with a view to reporting to the next meeting of the

Conference. The First Ministers agreed with the C.C.O.'s proposal, and observed that the goal to be achieved was that of ensuring the portability of the benefits of public retirement insurance.

At the request of Quebec, the subject of social policy was included on the agenda for the Constitutional Conference of February 1971. The Quebec representative on the C.C.O. had given notice of his government's intentions in this regard during the two Continuing Committee meetings which preceded the February Conference. At that time the subject of social policy was described as a new item which was an enlargement of the subject of income security and social services.

In opening the discussion, the Premier of Quebec, Mr. Bourassa, indicated that his government had requested that social policy be placed on the agenda in order that a formula for the improvement of the existing social services system might be put forward. It was pointed out that the multiplicity of social programmes both at the federal and provincial levels was detracting from the effectiveness of the system as a whole. It was recalled also that previous Quebec governments over the past ten years had requested exclusive jurisdiction over matters of social security. The present Quebec government, however, was adopting a more flexible stance, and was prepared to accept a federal power to legislate in certain areas of social policy to the extent that Quebec's objectives in these areas were respected.

The Quebec Minister of Social Affairs, Mr. Castonguay, then went on to outline the province's position on social policy, as had been presented to the Federal-Provincial Conference of Social Welfare Ministers in Ottawa, on January 28th and 29th, 1971. In Quebec's view it would be necessary to revise the whole range of social assistance programmes with a view to tailoring future programmes to satisfy more clearly defined objectives. Such a revision would require a more comprehensive and better integrated approach encompassing all essential social services which were themselves mutually independent. This could best be achieved through an income security programme which would provide a basis for additional programmes in other areas. A global approach of this type was not seen to require the elimination of existing programmes, but rather their readjustment to conform with overall objectives. Given the close

interrelationship of the various measures, Quebec called for primary responsibility rather than legislative exclusivity for the formulation of social policy, which would not preclude the federal government from continuing to redistribute wealth, or from participating in the financing and the administrative aspects of social policy. In terms of constitutional provisions, certain amendments to the B.N.A. Act would be required.

Many provinces expressed interest in the Quebec approach and felt it should be given further careful study. Some warned against any changes which would erode the federal economic powers. British Columbia repeated its belief that social security could best be met through a guaranteed annual income plan administered by the central government. But so long as the present taxation system was in effect, the province would want the present joint policies in the health and welfare field to continue.

The federal government took the view that there should continue to be room for different social policies in different provinces, and expressed its desire to co-ordinate its income security measures with the social policies of the provinces in order that each provincial government, as well as the federal government, might best realize its own social objectives. It was observed that the Quebec suggestions were not that divergent from the proposed federal Family Income Security Plan, the Old Age Security Pension and the Guaranteed Income Supplement; it was hoped that a reconciliation could be achieved between the various social objectives of the provinces and the federal government. Only in the case of the General Social Allowance Plan did more study seem required.

The Conference was informed that bilateral discussions had already been planned between provincial and federal ministers and officials on these matters and their possible constitutional implications, and a further meeting of the Ministers of Welfare on income security was scheduled to be held in several months. The First Ministers asked that this work be accelerated and that the Ministers of Welfare report to the meeting of the First Ministers in June.

During discussion of the next steps to be followed in dealing with the subject of social policy,

there was a considerable discussion concerning whether or not constitutional issues were involved. Quebec expressed the view that the constitutional aspects of the matter should be explored. The federal view was that the emphasis of forthcoming consultations would be on administrative means for integrating federal and provincial programmes; if it appeared as a result of this examination that a constitutional amendment was necessary, then this could be reported back to the governments.

In response to a question from some delegations concerning the importance Quebec was placing on the relationship between an agreement on social policy and acceptance of the other proposals for constitutional revision, the Government of Quebec stated that while there existed no dogmatic connection between the two aspects, it would be much more efficacious to arrive at an agreement on social policy at the same time as the other matters, in view of the potential impact these subjects held for the province. It would be easier for Quebec to accept an amending formula if there were, at the same time, an understanding on the vital question of social policy. Several First Ministers urged that the two areas should not be tied in any way, so that the tentative agreement regarding patriation and the amending formula would not be jeopardized.

The First Ministers also received a report from the Continuing Committee on the question of paramountcy as applied to public retirement insurance, and agreed that this matter should receive additional study. However, no such further examination took place, as the C.C.O. did not meet again following the February Conference, and the matter was not pursued by the First Ministers for purposes of inclusion in the draft Charter.

The bilateral discussions on the income security system which had been mentioned during the February Conference took place between the federal Minister of Health and Welfare, Mr. Munro, and the Quebec Minister of Social Affairs, Mr. Castonguay, on March 29th. Mr. Castonguay reported later to the ad hoc meeting of ministers on May 31st which had been called to look at the draft Charter that he had asked for the immediate consideration of a change with respect to family allowances and manpower training through their addition to section 94A of the B.N.A. Act.

It was not suggested however that this would fully meet Quebec's requirements for constitutional change. This explanation seemed to be at variance with the interpretation put on the bilateral meeting by the federal representatives. The Chairman of the ad hoc meeting, Mr. John Turner, declared that he had understood that Quebec's proposal would be limited to placing family allowances under section 94A and to making certain administrative arrangements with respect to manpower training, a proposal which he had asked other provinces to consider during his bilateral discussions on the substance of the draft Charter. He had therefore been surprised when in mid-May a specific text for revising section 94A had been put forward by Quebec with more extensive proposals.

The Quebec proposals were therefore discussed multilaterally by the ministers (mostly Attorneys General) for the first time on May 31st. A number of delegations indicated that with the short time remaining before the Constitutional Conference opening on June 14th, it would be extremely difficult to examine all the implications of the Quebec position. The hope was expressed that the need to give the proposal careful study would not prevent progress at the Victoria Conference. Quebec replied that it was not prepared, at this point, to say whether or not it could accept the amending formula without some progress in the area of social policy. In this respect, the chairman commented that he understood Quebec's political problem and the need to achieve something of substance; at the same time, he suggested there was considerable substance in the other constitutional areas covered by the draft Charter.

The discussion concluded with the observation that the question of social policy would be examined again by First Ministers in Victoria. In the meantime, there would be close consultation between the federal government and Quebec. It was noted, also, that the Welfare Ministers would be meeting on June 7 and 8, although it was not expected that they would be dealing with the constitutional aspects of the subject.

When the Welfare Ministers did meet, they were presented with a revised Quebec proposal which was a further elaboration of the May 31st text of revisions to section 94A. While there was some discussion of this proposal, the Welfare Ministers were not prepared

to make any recommendation in this regard and agreed to report individually to their First Ministers. During this meeting, Quebec again emphasized the importance of reaching agreement on the social policy issue.

Because of the nature of the debate at the Welfare Ministers' meeting, Mr. Castonguay gave notice that he would forward a paper elaborating Quebec's position. This paper was received by other governments in the week preceding the Victoria Conference. As a further step in presenting its views, Quebec asked the Secretariat to make arrangements for a special meeting on the Tuesday morning of the Conference in Victoria to provide an opportunity for Quebec to brief other delegations on its paper.

When the Victoria Conference got under way on June 14, 1971, Ottawa's position continued to be that there should be no constitutional amendment which would prevent the federal government from effecting its redistributive role or which would constitute an encouragement for it to withdraw from programmes where it was at present making income security payments, since this would be to the disadvantage of the provinces below the Canadian average. In its opening remarks, Quebec enunciated three principles which it was felt would be basic to an agreement. These were that there should be concurrency of powers and mandatory consultation, and that this general concurrency be accompanied by provincial primacy with respect to the formulation of income security policies.

When the main debate on social policy began on the afternoon of Tuesday, the 15th, the First Ministers had before them not only Quebec's proposed text on section 94A but a draft federal text as well. In introducing the federal draft on section 94A, Mr. Trudeau explained that while it did not go as far as Quebec's it was an attempt at finding an application of the three principles articulated the day before by Mr. Bourassa, and with which the federal government could live. The following is a comparison of the federal and Quebec proposals on section 94A.

Quebec

94A. (1) The Parliament of Canada may make laws in relation to the following classes of subjects:

- a) family allowances;
 - b) manpower training allowances;
 - c) guaranteed old age income supplement;
 - d) youth allowances and social allowances;
 - e) unemployment insurance;
 - f) old age pensions and supplementary benefits to survivors and disabled persons irrespective of age.
- (2) No bill in relation to these classes of subjects may however be introduced in the House of Commons unless previous consultation concerning this law has been held with the government of each province in which such bill would apply.
- (3) Whenever a law in relation to the classes of subjects mentioned in sub-paragraphs (a), (b) and (c) of the first paragraph is made by a provincial legislature, any law of the Parliament of Canada in relation to the same classes of subjects shall have effect in the territory of the province only to the extent that the law of the legislature makes provision therefor.
- (4) No law made by the Parliament of Canada in relation to the classes of subjects mentioned in sub-paragraphs (d), (e) and (f) of the first paragraph shall affect the operation of any law present or future of a Provincial Legislature.
- (5) The Parliament of Canada may make laws respecting the appropriation of public moneys for purposes of income security in relation to other classes of subjects than those mentioned in the first paragraph. However, such laws if made by the Parliament of Canada after the coming into force of this section, shall apply in a province only to the extent provided for in subsection 3.

- (6) Whenever a law of the Parliament of Canada in relation to a class of subjects mentioned in the first paragraph is rendered inapplicable in whole or in part by any law made by the legislature of a province under subsection 3, the government of that province shall receive compensation according to the amount that would have been spent by the government of Canada in the territory of such province, had the law of the Parliament of Canada applied to its territory.

Federal

1. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits, including survivors, and disability benefits irrespective of age, and in relation to family and youth allowances, but no such law shall affect the operation of any law present or future of a provincial legislature in relation to any such matter.

2. The Government of Canada shall not introduce a bill in the House of Commons in relation to a matter described in Article 1 unless it has, at least ninety days before such introduction, advised the government of each province of the substance of the proposed legislation and requested its views thereon.

The federal Minister of Health and Welfare reported on behalf of the Welfare Ministers and also on the administrative changes planned by way of the federal FISP programme. With respect to the Quebec proposal which called for payments to governments, the federal government felt it was necessary that it should be able to continue to redistribute income across the country by making direct payments to persons with low incomes. Quebec recognized the value of the administrative changes proposed by Mr. Munro but was of the view that these would not afford constitutional protection for the future. Mr. Bourassa said that, in its proposal, his province was not asking for exclusive powers in the area of social policy but rather that it be given legislative primacy in certain areas where provincial priorities had to be recognized.

A number of First Ministers then commented on the two proposals which had been made concerning section 94A. British Columbia felt that neither proposal was an adequate substitute for a guaranteed annual income, while Prince Edward Island suggested that it would be better to start by examining first the general principles of an ideal social security plan. For New Brunswick, agreement with either proposal was impossible until the necessary fiscal arrangements were known as well as the ultimate effects on the people of the province. Manitoba observed that the proposals differed mainly in that the federal text made no reference to fiscal compensation, and suggested a compromise by way of equalization payments. Ontario supported the concept that a much more integrated approach should be taken to the planning and administration of income security programmes and while reluctant to accept Quebec's proposal, did agree with that province's desire for a decentralized federalism. Ontario's basic position was that income security and income redistribution should be an integral part of taxation policies allowing for a guaranteed minimum family income through a system of tax credits. The province was also of the view that federal jurisdiction over unemployment insurance should be retained although some benefits could be integrated with provincial programmes, that old age security should not be taken over by the provinces, and that the text on retirement insurance should be written so as to guarantee portability of benefits. Ontario emphasized the need for better intergovernmental co-ordination in fields of concurrent jurisdiction and suggested that section 94A might provide for consultation in advance of both federal or provincial legislation in these areas.

The First Ministers decided to continue their discussions on social policy in private session. It was subsequently agreed to revise section 94A of the B.N.A. Act in accordance with the federal draft, but that "occupational training allowances" should be added to the subjects in the proposal. It was also agreed to incorporate this new text into the Victoria Charter as articles 44 and 45 (see Appendix B), and to repeal the existing section 94A of the B.N.A. Act. It should be recalled that First Ministers were to decide that the Charter would have to be accepted as a whole or rejected when examined by individual governments following the Conference.

The subsequent rejection of the Victoria Charter by the Quebec government on the basis of articles 44 and 45 is described in Chapter 2. A summary of the Ottawa-Quebec discussions on social policy following the rejection of the Charter will also be found in that Chapter.

(4) The capital market and financial institutions

The subject of the capital market and financial institutions was discussed only once by First Ministers, at the Constitutional Conference in September 1970. At that meeting delegates had before them a federal working paper on this subject which had been examined by the Continuing Committee at its 12th meeting at the beginning of the same month (see Chapter 4). While no report to the First Ministers had been produced as a result of this meeting, the Secretariat, at the request of the C.C.O., had prepared a discussion outline including the major proposals of the federal paper as well as a number of provincial observations and questions regarding the proposals.

The examination of this subject by First Ministers was regarded as preliminary. Discussions were divided into four parts which coincided with the four areas in which federal proposals had been put forward - currency and banking, credit control, financial institutions, and the securities market.

In the first of these, the federal paper proposed that there be a continuation of federal jurisdiction over currency and banking, but that the present federal jurisdiction over savings banks be transferred to the provinces. It was generally agreed that the chartered banks should continue as a federal responsibility. While a number of provinces agreed with both aspects of the federal proposal, there was no agreement specifically related to savings banks. British Columbia, supported by Alberta, suggested that the central Bank of Canada be specifically provided for in the constitution and proposed that jurisdiction over chartered banks and other major financial institutions be vested in a Fiscal and Monetary Council, with provincial participation in the appointment of members of the Board of Directors of the central bank and members of the Council. Manitoba suggested that rather than giving the

provinces the power to appoint directors of the central bank, there might be consultation with a province concerning who should be appointed from that province. The federal government suggested that a provincial role with respect to the central bank might be considered as an aspect of the mechanisms of federal-provincial relations, and pointed out that at present directors of the bank were appointed from every province in Canada. While recognizing that there might be difficulty in trying to achieve a genuine sharing of jurisdiction between the federal government and the provinces without paralyzing the Bank of Canada, Quebec proposed that the federal government give serious consideration to proposals for a decentralization of the operations of the central bank.

A number of provinces expressed the view that at present banking institutions were not sensitive enough to the needs of the various regions of Canada or even to some sectors of the economy. It was agreed that there should be discussions of ways, under the present constitution, of making these institutions more responsive to regional needs. It was suggested that the Ministers of Finance and the federal Cabinet might examine the possibilities for encouraging this. Three provinces suggested the objective might be achieved by permitting the provinces to hold voting shares in the chartered banks.

In the second area, credit control, the federal paper proposed that the constitution should provide for explicit concurrent powers over credit. For most purposes, the provincial power would be paramount, however this paramountcy would be federal where the federal legislation was made for national economic purposes. First Ministers agreed with the proposal regarding concurrency, but felt that more detailed study of any paramountcy would be desirable. Many provinces felt that there was a need for a more specific definition of terms such as "credit" and "national economic purposes".

In the third area the federal proposal called for exclusive federal power to regulate financial institutions which carried on business in two or more provinces or internationally, and exclusive provincial power to regulate financial institutions, other than banks, which carried on business only within one province. There was little support for this proposal,

and a number of alternative approaches for solving the problem of divided jurisdiction, including intergovernmental co-operation and the delegation of powers, were put forward. It was suggested that the federal proposal would remove from the provincial sphere financial institutions over which provinces currently had control. It was agreed that the implications of all the alternatives should be explored.

In the fourth and final area of the federal proposal, the securities market, it was suggested that in the revision of the constitution Parliament should be given specific powers to make laws relating to the sale of securities by a vendor residing in one province to a purchaser residing outside the province, and relating to the issue of securities the sale of which was not restricted to purchasers residing in the province of issue only. It was also proposed that it be made clear that Parliament could legislate in regard to the sale of securities of federal origin and the purchase of securities from vendors outside Canada. In presenting this proposal the federal government indicated that it had been designed to meet the needs of future years when some sort of national securities administration would be necessary to ensure an orderly and efficient marketing, both internationally and domestically. A few First Ministers were of the view that a greater federal presence in this field was called for. However several provinces felt that there was no such need in a field that was being satisfactorily administered at the provincial level, and that Ottawa's intervention would do little to improve present investor protection. Ontario noted that there was a requirement for more uniform legislation and procedures which could best be provided by a nation-wide regulatory agency without recourse to a constitutional revision. The province suggested that in addition to the above federal proposal, the Conference should consider the Ontario CANSEC scheme, the 1968 federal proposal to the Federal-Provincial Committee on Financial Institutions and Securities Regulation, as well as that found in the 1969 Report of the Quebec Study Committee on Financial Institutions. It was agreed by First Ministers that all these alternatives should be examined in detail.

The Ministers of Finance and other ministers, as appropriate, as well as the C.C.O. were asked to continue to study in detail the implications of the various approaches to the general field of the capital market and financial institutions as indicated above, in preparation for a fuller discussion by the Conference at its next meeting. However, although the Continuing Committee was to pursue the mandate that had been given to it at its 13th and 14th meetings (see Chapter 4), the Ministers of Finance were not able to begin their own examination of the subject. Accordingly, it was later decided that the question of the capital market and financial institutions should not be included in the agenda for the February 1971 Constitutional Conference.

(5) Environmental management (pollution)

Environmental management and the control of pollution were discussed by First Ministers as a popular subject requiring current solutions which had important constitutional implications rather than as the next logical step in the overall plan for discussing the distribution of powers. The provincial Premiers, at their annual meeting in August 1969, had called for an early consideration of pollution problems. The matter was also a major topic of discussion at the non-constitutional Federal-Provincial Conference on February 16 and 17, 1970. The following June, the Prime Minister proposed that the subject of environmental management be put on the agenda of the next meeting of the Constitutional Conference and the C.C.O. began its preparatory work in this field (see Chapter 4).

When the Constitutional Conference came to order in September 1970, First Ministers had before them a discussion outline on environmental management put forward by the federal government, as well as a position paper from the Government of Alberta. The Conference explored many of the dimensions of this subject, and several governments put forward suggestions for dealing with the effective management of the environment. Most agreed that the present constitutional position was complicated and unclear; however, it was also agreed that both orders of government would need comprehensive powers to control pollution. The federal government was supported in its view that while it should have power to act with regard to air and water pollution of interprovincial

or international significance, this power would only be used in the absence of action by the province where the pollution originated. In addition to a federal responsibility for fulfilling all international commitments, the federal government stressed its role for supplementing provincial action through the regulation of the production and marketing of substance, machines and equipment which generated pollution.

British Columbia recognized the many inter-provincial and international aspects of the problem, and called for constitutional flexibility. It also listed a number of urgent problems requiring federal action with respect to the development of norms, control regulations, facilities and financial support for research into control techniques and assistance in financing pollution control programmes. Ontario supported these views and suggested some mechanisms to provide constitutional flexibility including intergovernmental agreements, legislative and administrative delegation and paramountcy in certain areas. It was Ontario's view that the provinces should have responsibility for problems within their own boundaries, except where there was an agreed need for federal assistance. Federal and provincial action in making tax rebates, loans and grants to industry to encourage anti-pollution measures should be considered. Ontario also expressed concern with the existing federal immunity from provincial regulations. Manitoba supported the concept of federal paramountcy in certain cases such as air pollution, and suggested that when water pollution became interprovincial in nature it should automatically become a federal problem. Nova Scotia suggested that many pollution problems might be dealt with through the extension of the criminal law. Alberta called for an inter-governmental co-ordinating agency, suggesting that the problem was not which government should be exercising jurisdiction regarding environmental management, but rather which combination of governments was most appropriate to deal with the matter.

The Conference concluded that governments should continue to study the constitutional aspects of environmental management with a view to presenting proposals for possible constitutional changes in jurisdiction which would be discussed at the next meeting of the First Ministers. It was also agreed that governments would continue to act co-operatively

and to implement co-ordinated programmes of environmental management under the present constitutional arrangements, while the constitutional discussions were going on (see Appendix B).

When the Conference met again in February 1971 it had before it two papers on environmental management, the federal government's wide-ranging working paper on "Constitutional Powers to Control Pollution", and a Secretariat briefing paper reporting on the Continuing Committee's examination of the specific proposal contained in the federal paper (see Chapter 4 for C.C.O. discussions). The federal proposal was that there should be a new concurrent power for Parliament and the provincial Legislatures to make laws in relation to pollution of air and water. Under the terms of this proposal, where there was a conflict between a federal law and a provincial law made under this power, the federal law would prevail if it applied to the control of pollution which had, or if permitted would have, significant international or interprovincial effects. In other circumstances, the provincial law would prevail over the federal law.

In introducing the proposal, the federal spokesman said that it was being put forward to clear up uncertainties, and situations where federal and provincial laws tended to conflict. Moreover, it would facilitate dealing with interprovincial situations, and would help the federal government to honour international obligations which it would undoubtedly be entering in respect of the general matter of global pollution.

The proposal attracted the support of some Premiers, although several felt that more study was required to clarify the constitutional implications. It was also suggested that the words "significant international or interprovincial effects" ought to be defined. Others felt that areas of exclusive federal and provincial jurisdiction would be preferable to the general concurrency proposed.

Quebec put forward a six-part alternative as follows:

- 1) A constitutional obligation on Parliament and the ten legislatures to take within their respective territories the necessary

measures to assure a minimum standard of quality of the air and water.

- ii) Exclusive power for provincial legislatures to legislate with regard to water and air pollution within their borders, and for Parliament to legislate with respect to territories not organized into provinces.
- iii) Compliance of activities under federal jurisdiction with provincial regulations against pollution.
- iv) Power to a future constitutional court to sanction the obligation in i) above at the request of the federal government or of a provincial government.
- v) Power to a future constitutional court to hear litigation between governments on the question on damage caused to public property. As for litigation between individuals and between an individual and a government other than his provincial government, the Constitution should indicate the applicable law and the competent tribunal.
- vi) A joint power for parliament and the provincial legislatures with regard to pollution with international effects, with federal paramountcy for the international relations aspects and provincial paramountcy for aspects relating to management and conservation of resources.

Ontario also expressed doubt as to the need for concurrent powers as contained in the federal proposal. In its view such powers could lead to a duplication of laws, complexity and uncertainty, and to federal involvement in areas, such as municipalities and industries located on inland waters, which fall mainly within the provincial domain.

With regard to the control of interprovincial pollution, Ontario suggested two steps. First, an effort should be made to obtain an agreement between the provinces affected, which could involve assistance

from the federal government. Secondly, if such agreement could not be obtained, then there should be a procedure whereby a province could petition the federal government to require that standards be met within a stated period of time. Under such a procedure, it would be reasonable to expect that the federal government would accept a degree of financial responsibility. A similar procedure could be considered for any international problem.

Although British Columbia was not present for this discussion on environmental management, it had submitted a statement of its views. In particular, the province suggested that there ought to be an area of exclusive provincial jurisdiction for matters wholly within the province, with the exception that the federal government should be able to establish national standards. It also noted that the possibility of agreement being reached where there were international or interprovincial effects should not be forgotten.

Some provinces suggested that new constitutional provisions could better be considered after more experience had been gained in dealing with pollution, and that in the meantime it would be preferable to rely on improved arrangements for co-ordination and co-operation between governments based upon existing constitutional provisions. However, the First Ministers agreed that the implications of the various approaches to new constitutional provisions should be given further study.

This was to be the last time the question of environmental management was examined during the constitutional review, the subject not being ready for inclusion in the "package" of constitutional reforms for approval at Victoria.

(6) Canadian common market/Canadian interprovincial marketing

In his letter of December 22, 1970, proposing an agenda for the Conference planned for February 1971, the Prime Minister suggested a preliminary discussion of certain aspects of the subject of the Canadian common market, in particular, the question of the free flow of commodities within Canada, the legislative powers related to this and the constitutional guarantees for the free movement of

goods. During their one day non-constitutional meeting on September 16, 1970, the First Ministers had already discussed current interprovincial marketing problems with respect to certain agricultural products.

This previous meeting, as well as the new dimensions which the "Chicken and Egg War" had since taken were to result in the discussions at the February 1971 Constitutional Conference revolving around current problems, particularly in the agricultural field. These discussions were held without a previous examination by officials. First Ministers took a further look at Bill 197, the federal Farm Products Marketing Agencies Bill, which provided for a joint approach to marketing. Although it was suggested that this measure, once passed, would facilitate a satisfactory resolution of the problem of interprovincial trade restrictions, some felt that other action was also needed. Some provinces suggested that provincial marketing boards should retract certain regulations that affected the free movement of goods; others were of the view that this could not be done unless additional action was taken to replace such regulations and avoid harm to local agricultural industries. Manitoba pointed out that it had referred its own proposed regulations to the Supreme Court for an opinion as to their constitutionality. Another view expressed was that the federal government should exercise its existing constitutional powers to deal with the matter.

In the end, the Conference observed that the general question of interprovincial trade was a fundamental constitutional question which should be given fuller examination at a later meeting. The First Ministers agreed to change the title of the section in the conclusions of their Conference dealing with this question from "Canadian Common Market" to "Canadian Interprovincial Marketing" in order to remove any suggestion of separate states entering into a consortium for marketing purposes.

The subject was not discussed further during the constitutional review.

(7) External relations

At the first Constitutional Conference in February 1968 several governments made reference to the need for a strong federal government with exclusive

authority over external relations. These references could be taken as a response to Quebec's frequently repeated desire to give priority to an examination of the constitutional power in regard to foreign affairs, particularly relations with other countries and international organizations. Quebec's position was that the province should have, within the limits of Canadian foreign policy, a recognized capacity to negotiate and sign its own agreements with foreign governments on matters subject to the province's internal jurisdiction. It was also felt that the Quebec government should be regularly invited to participate in Canadian delegations at international conferences and at meetings of international organizations of which Canada was a member, and which dealt with questions within fields of provincial competence. Similarly, it was proposed that the province should be empowered to attend international conferences of provincial interest where Canada was not a participant, and that the Quebec government should be in a position to play a more substantial role in external aid.

There was no debate of substance on the matter at this first Constitutional Conference. However, in the closing moments of the final session, the Prime Minister of Canada presented a document entitled "Federalism and International Relations", intended as a working document for future consideration. This was followed, three months later in May, by a supplement entitled "Federalism and International Conferences on Education".

Although the subject was not discussed at the second Constitutional Conference in February 1969, Quebec took the occasion to table its own "Working Paper on Foreign Relations" which expanded on the themes developed a year earlier and which had since been reiterated in its propositions to the Continuing Committee of Officials.

It might be noted that the examination of propositions by the C.C.O. prior to the February 1969 Conference was to be the only occasion when the subject of external relations was discussed by officials during the review. These general discussions on propositions were reviewed in the Secretariat's briefing paper submitted to the February meeting.

Following the February 1969 Constitutional Conference, it was not until the federal government suggested that provisions concerning external relations might be included among the initial measures of constitutional reform that the subject was discussed again. The Conference in February 1971 was presented with a federal proposal which had been examined with some provincial leaders in the bilateral discussions preceding the Conference. This text proposed that the constitution might state that:

- (a) the federal government has power over foreign policy and international relations generally;
- (b) the federal government should consult with the provinces before entering into commitments involving areas of exclusively provincial jurisdiction; and
- (c) provincial governments have power to enter into informal administrative arrangements and other similar commitments suitably described with foreign jurisdictions, subject to the overriding general federal responsibility for foreign policy and international relations.

It was suggested that such provisions would entrench the present constitutional situation in this field.

Several provinces indicated agreement with the federal proposal. However, because of Quebec's desire to have the federal government clarify the meaning of certain expressions, the item was set aside while Quebec and federal officials tried to agree on an appropriate text. The two delegations were unable to work one out before the end of the Conference, and no conclusion was reached. It was understood that the item might be brought forward again at Victoria if in the meantime an acceptable text could be developed by Quebec and Ottawa.

The draft Charter presented at the Victoria Conference included five articles dealing with international relations. These articles were basically a formal expression of the three-part proposal described above, plus the repeal, through the Schedule attached to the Charter, of section 132 of the B.N.A. Act. At the ad hoc meeting of Ministers held two

weeks prior to the Victoria meeting, Quebec had indicated that these articles constituted a feasible approach, but withheld outright agreement pending further examination by experts.

When the question was before the Conference in June, Quebec expressed particular reservations with respect to the authority accorded to the provinces. Despite attempts to amend the draft provisions to meet that province's point, agreement could not be reached and articles on international relations were not included in the Victoria Charter.

E. The Institutions Linked to Federalism

At the initial Constitutional Conference, it was agreed that the fourth of the seven specific questions to be examined would be the reform of institutions linked to federalism, including the Senate and the Supreme Court of Canada. This section deals with discussions on both of these institutions, together with those on the national capital.

(1) The Senate

At the first Constitutional Conference several First Ministers singled out the Senate as one of the institutions of government which ought to be examined. A number of aspects were proposed for study. Among these were the role, powers and functions of the Senate, its position in the federal structure, its composition, the manner of appointment of its members and the length of the term of office.

At the second Constitutional Conference in February 1969, the First Ministers received a report on discussions within the C.C.O. which outlined the examination which officials had carried out concerning the propositions on the Senate (see Chapter 4). There was no discussion of substance by the First Ministers, but it was decided that a ministerial committee should be established to study possible constitutional provisions relating to the reform of the Senate. This committee was expected to take into account a number of considerations specified by the Conference (see Appendix B).

At the Conference in June 1969, there was no discussion of the Senate. First Ministers took note however of the progress report of the first meeting of the Committee of Ministers on the Senate (see Chapter 5) and asked it to meet again and report further prior to the next Conference.

The ministerial committee did not reconvene before the Conference of December 1969, and there was no further discussion of Senate reform during the rest of the constitutional review. It should be noted however that The Special Joint Committee of the Senate and of the House of Commons which was constituted about this time included the matter in its own examination of the constitution.

It should also be recalled that the Senate continued to be referred to in the context of other constitutional subjects. In this way, it was proposed during discussions on the Supreme Court that appointments to the Court should be subject to the approval of the Senate, assuming that certain changes in the character of the latter institution were made. During discussions on the spending power, it was also proposed that the determination of a national consensus favouring the introduction of new shared-cost programmes could be based on a reference to the four Senate divisions provided in the B.N.A. Act. The Senate is also the subject of some special dispositions in the amendment provisions contained in the Victoria Charter.

(2) The Supreme Court of Canada

At the first Constitutional Conference a number of First Ministers referred to the need to include an examination of the composition and powers of the Supreme Court of Canada as part of the overall constitutional review. Consequently, the Supreme Court was listed among examples of the institutions linked to federalism to be examined.

When the First Ministers reconvened for the second Constitutional Conference in February 1969, they had before them the report on the deliberations within the C.C.O. regarding the propositions which had been received with respect to the constitution of the judicial system (see Chapter 4). There was some discussion by the Conference regarding possible provisions on the Supreme Court in the constitution

and the system for appointing judges to the Court. Quebec's proposal for a Constitutional Court and the proposal for dividing the Supreme Court into separate chambers were also looked at.

It was concluded by the Conference that the constitution should provide for the independence of the Judiciary, and that a ministerial committee should consider further provisions concerning the Supreme Court and the Judiciary.

The Conference in June 1969 received a progress report from the Committee of Ministers on the Judiciary which outlined the matters which the Committee proposed to examine at future meetings (see Chapter 5 for discussions in this ministerial committee). First Ministers took note of the report but there was no discussion of substance.

The Constitutional Conference in December 1969 was presented with a second progress report from the ministerial committee. Its contents were acknowledged and the Committee was asked to continue its work.

The question of the Judiciary was not discussed at the September 1970 Conference. However, some progress was made on this subject during the bilateral consultations in January 1971, to the point where provisions relating to the Supreme Court could be suggested for inclusion in the "package" of initial measures of constitutional reform put forward by the federal government.

At their Conference in February 1971, the First Ministers agreed that the existence and the independence of the Supreme Court of Canada, as well as some aspects of its basic structure, should be entrenched in the constitution. The Court would continue to have jurisdiction as a court of final appeal for the country. Further discussions would be undertaken regarding the jurisdiction of the Supreme Court to hear appeals in matters of strictly provincial law.

It was also agreed that the federal government would retain the power of appointment to the Supreme Court, but that the constitution would recognize the importance of provincial participation in the process of selection of suitable candidates. Proposals made during the Conference regarding the nature of this

provincial participation included a nominating committee which would prepare a list of judges from which selection could be made, the ratification of appointees by a majority of provinces, and, a federal obligation to consult with the governments of those provinces from which an impending appointment might come. It was also concluded by the Conference that study should be given to the means of assuring the availability on the Court of civil law judges to hear civil law appeals.

The Charter agreed upon at the Victoria Conference in June 1971 included two Parts dealing with the Judiciary, one entitled "Supreme Court of Canada" and consisting of 21 articles, and one entitled "Courts of Canada" with one article. The general intention of the first section was to entrench the Supreme Court in the constitution and to define its jurisdiction. The possibility of the Court becoming an arbitration tribunal was avoided, and the special position of Quebec law and the Civil Code was recognized. These provisions on the Judiciary were accepted only after lengthy discussions by the Conference, including special separate meetings of the Attorneys General. (See Appendix B for text of these provisions.)

During the Conference discussions, it was observed by British Columbia, Manitoba and Alberta that their reluctance in agreeing to the provision on the general composition of the Supreme Court (a Chief Justice, plus eight other judges) should be noted. British Columbia felt that the constitution should provide for the representation on the Court of five regions in Canada, and Alberta and Manitoba thought that the number of judges on the Court should be increased. As for provincial participation in the selection of candidates, the Conference decided that a procedure combining both Ontario and Quebec proposals would constitute the most suitable compromise, and it approved the nominating procedure which is described in the Victoria Charter. With respect to the retirement of judges at age seventy, it was decided to add a provision under the "Modernization" section of the Charter to insure that current appointees would not be affected. Manitoba proposed that a provision enabling questions of law in interprovincial or federal-provincial disputes to be referred directly to the Supreme Court by the federal or a provincial government without an appeal from a provincial court be added to the Charter. However this proposal was subsequently

withdrawn by the province, on the understanding that it would be considered further in any constitutional discussions following the Conference. Some reservations were expressed regarding the provisions dealing with the jurisdiction of the Supreme Court, but these were approved subject to the jurisdictional question being reconsidered as part of any further constitutional review following the Conference. The Conference also decided to replace two articles which provided that provinces could curtail appeals to the Supreme Court of Canada in provincial law matters, by a provision ensuring the continuance of the power of a province to provide for or limit appeals within the province pursuant to its power to legislate in relation to the administration of justice in the province.

An alternate proposal for this part of the Charter submitted by Ontario was also examined.

The single article in the section entitled "Courts of Canada" was designed to continue the provisions of section 101 of the B.N.A. Act.

In conclusion, it might be noted that the agreements which had been reached in Victoria by the First Ministers regarding the Supreme Court went beyond the matters that had been discussed by the ministerial committee and the C.C.O.

(3) The National Capital

At the first Constitutional Conference in February 1968, Mr. Pearson had sought the concurrence of all the First Ministers in the establishment of a tripartite committee on the development of the capital region of Canada. The committee would have equal representation from Ontario, Quebec and the federal government and would derive its powers from the three governments. The proposal was accepted without debate, but the agreement did not appear in the conclusions of the Conference.

At the second Constitutional Conference in February 1969, Mr. Trudeau indicated that the tripartite committee had progressed in its work during the preceding year to the point where the involvement of all the provinces, as well as of the people of the Hull and Ottawa regions would now be appropriate.

The Conference recognized that the development of the capital region was of continuing interest and, subject to any comments that might be submitted, agreed that the cities of Ottawa and Hull and their surrounding areas would constitute the Canadian capital area. However, no changes in provincial boundaries or constitutional jurisdiction would be made, and the boundaries of this capital area would be established by the agreement of the governments concerned. It was also agreed that steps should be taken so that the two official languages and the cultural values common to all Canadians were recognized by the governments concerned and reflected in the capital area. The tripartite study committee on the Canadian Capital was asked to give particular importance to the definition of adjacent areas which would eventually constitute, along with the cities of Ottawa and Hull, and their surrounding areas, the Canadian Capital Region, and to study the administration and the financing of a tripartite organization. (See Appendix B.)

There were minimal comments from the provinces on the substance of this agreement.

The subject did not come up again during the rest of the constitutional review.

F. The Amending Formula, Patriation and Modernization of the Constitution

Because these three subjects were closely linked during discussions, they have been grouped together here in a single section. However, each subject will be treated separately within the section, and an indication of the relationship with the other two given where appropriate.

The questions of patriation and the amending formula, including the concept of delegation, were among the subjects proposed for review at the first Constitutional Conference in February 1968. This resulted in the sixth item in the list of seven questions to be examined, "amending procedure and provisional arrangements". A number of delegations believed that this was a question of the first order and should be the first matter to be discussed. Others felt that these issues should be left to the end of the review so as to take into account changes that might be agreed to, particularly with respect to the distribution of powers.

In the event, none of these subjects was examined at any length until the Constitutional Conference in September 1970. Within the framework of a discussion on the constitutional review process and the future of the review, nine of the provinces suggested at that Conference that the task of finding a feasible amending formula should be given high, if not immediate, priority. For their part, Quebec and the federal government were hesitant to get into the question, both because of the experience with the Fulton-Favreau formula and because of a preference for examining formulae in the light of decisions on specific provisions. Some Premiers felt however that one important reason for considering the matter at that time was that certain urgent amendments to the present constitution might be required before the full review had been completed, and that it would be important to have an appropriate method for making such amendments. Others felt that in any event early action should be taken to patriate the constitution even if this involved accepting unanimity as a basis for amendment. This suggestion gave rise to discussions which are described in section (1) below.

Ultimately it was agreed that the subject of the amending formula would not be placed formally on the agenda of the next Conference unless preliminary soundings indicated a likelihood that good progress could be made towards reaching an agreement. This would be determined through bilateral and informal consultations between governments, with the federal Minister of Justice acting on behalf of the federal government. At the same time, the Continuing Committee of Officials would carry out a detailed investigation of ways of amending the constitution. On this basis the question of patriation was left in abeyance.

(1) The amending formula

During the months between the September Conference and that of February 1971, work on an amending formula took place on two levels. The C.C.O. held two meetings during which there were general discussions on the amendment of the constitution and the reasons for the unacceptability of the Fulton-Favreau formula (see Chapter 4). The Committee also looked at working papers from three provinces which contained some specific proposals with respect to a formula. At the same time, the federal Minister of Justice held separate consultations with the

provincial governments regarding a specific amendment formula. These latter consultations having revealed a sufficient likelihood of success, it was decided that the subject should be put on the agenda of the Constitutional Conference called for February 1971 where the amendment procedure was discussed independently of the examination which had been held in the C.C.O.

At the February 1971 Conference, the Prime Minister informed the opening session of the substance of a formula on which agreement had been reached with eight Premiers during the private dinner meeting the previous evening. This information was then followed by an adjournment of the opening session, so that the two Premiers who had been absent the previous evening might be fully briefed and their agreement obtained to the inclusion of such a formula in the "package". There was no debate on the formula in the plenary sessions of the Conference which followed, except during examination of the draft conclusions when some points were clarified.

The conclusions of the February Conference (see Appendix B) record that First Ministers agreed that the Government of Canada and the provinces should proceed as quickly as possible to patriate the constitution, with an appropriate amending formula applicable entirely within Canada and with such other changes as could be agreed upon quickly. It was agreed that the following amending formula constituted a feasible approach:

- (i) in general all constitutional amendments, except those in (ii) and (iii), would require the consent of the federal level plus the consent of the majority of provincial Legislatures, including that of any province having now or in the future 25% of the population of Canada, as well as that of at least two provinces west of Ontario provided that they comprised 50% of the population of the four western provinces, and that of at least two provinces east of Quebec;
- (ii) sections 91(1) and 92(1) of the B.N.A. Act would be repealed and replaced by a section giving each order of government power to amend its own constitution except

with regard to five matters where the general procedure would apply;

- (iii) amendments concerning Canada plus one or more but not all provinces would require the consent of the federal level and the consent of the Legislatures of the provinces concerned.

While there was unanimity with respect to the feasibility of this formula, it should be noted that Quebec considered that the question of social policy constituted a fundamental element of the constitutional revision as a whole, implying that agreement respecting the amending formula would be influenced by the degree of agreement reached on social policy. Moreover, Quebec had stated that it would want to look further into the legal implications of the formula.

The essence of the amending formula agreed to in February 1971 was subsequently translated into draft constitutional provisions by the federal government and the texts distributed to the provinces. These were examined in bilateral discussions between the federal and provincial governments, as well as in ad hoc multilateral discussions between officials on March 29th and ministers (mostly Attorneys General and Ministers of Justice) on May 31st. When the First Ministers received the texts in Victoria the following June, the proposed amendment formula had undergone only minor drafting changes.

The proposed amendment formula was covered in nine articles in the draft Charter presented to the Victoria Conference. These were examined by the First Ministers and, with minor changes, subsequently included in the Victoria Charter (see Appendix B).

Two reservations were expressed with respect to the formula during the Conference discussions. The federal government felt that its agreement to the formula should record its concurrent reservation that the provision would give a possible veto to British Columbia if that province had 50% of the population of the western provinces even though, at the same time, it might have less than 25% of the population of Canada. For its part, Manitoba accepted the section dealing with the powers and composition of the Senate with reluctance, suggesting that it reflected too much rigidity, and that

Parliament alone should have power to make laws regarding these matters.

(2) Patriation of the constitution

It was in the midst of a debate on whether to accord high priority to an amending formula at the Constitutional Conference in September 1970, that the question of patriating the present constitution was raised. In this context, patriation was put forward as immediately desirable, independent of any agreement on an amending formula. The suggestion was that without awaiting a new formula, the present constitution should be brought home, and amendments made with unanimous consent.

The discussions on this proposal gave rise to a number of questions. These included the procedure for bringing patriation about; whether the Parliament of Canada acting alone could enact the constitution as a federal statute or only with concurrent enactment by the provinces; whether the effect of enacting the constitution by way of a federal statute would give Ottawa the power to amend the whole constitution alone, thereby reducing the entrenched rights of the provinces; and whether patriation as proposed would result in rigidity concerning future constitutional amendments unless it was also accompanied by a new amendment formula.

It was suggested during these discussions that to patriate the constitution without a new amending formula would only produce a semblance of progress and that while the mechanics might look simple, the effects could be far-reaching. It was agreed that further consideration should be given to the question before formal discussions could be carried further. Accordingly, no mention was made of patriation in the conclusions of the September Conference.

Despite the absence of specific direction in this regard, the question of patriation was subsequently examined both by the Continuing Committee as part of its discussions on the amending formula (see Chapter 4) and by the federal Minister of Justice in his bilateral discussions with the provinces. Thus, on the first morning of the Conference in February 1971, it was possible to announce that agreement had been reached on patriation along with the agreement on the amending formula at the private

discussions the previous evening. The two Premiers who had missed the private meeting later subscribed to this agreement.

Subject to further analysis of the implication of this agreement, the First Ministers then decided on the following procedure for patriation:

- (a) agreement among the governments as to changes and procedure;
- (b) approval of a resolution by Legislatures and the two Houses of Parliament, authorizing the Governor General to issue a proclamation containing the amendment formula and whatever changes would be agreed upon;
- (c) a recommendation that the British Parliament legislate to recognize the legal validity of the Canadian proclamation, to provide that no future British law should have application to Canada, and to make any consequential repeal or amendment of British statutes affecting the Canadian constitution;
- (d) issuance of the proclamation by the Governor General on a date to coincide with the effective date of the British law.

With a view to having the formal procedure for patriation ready for consideration at the Victoria Conference in June 1971, should there be agreement during that meeting on the contents of a draft Charter, the federal Minister of Justice visited London to consult with the British authorities concerning the procedure outlined above. In addition, a federal paper was circulated and discussed at the meeting of federal and provincial ministers on May 31st, which recommended that the content and operative words of the resolutions submitted to the provincial and federal Legislatures should be as uniform as possible in order to avoid any questions as to the effect of legislative consent. The operative words proposed for the resolutions were accepted at this meeting, and it was understood that the substantive constitutional

changes to be attached to each resolution would also be identical.

The formal procedure for patriating the constitution was approved by the meeting of ministers on May 31st, and was subsequently confirmed by the First Ministers at the Victoria Conference in June. The complete procedure as approved is included in Appendix B. It was agreed in Victoria that once the acceptance of all governments had been received with respect to the Charter approved at that Conference, the remaining steps leading to patriation would be undertaken.

No further action was to be taken however, as a result of the failure to secure the unanimous acceptance of the Victoria Charter by all governments.

(3) Modernization of the constitution

Although the Constitutional Conference in September 1970 examined the question of amendments to the present constitution, there was no discussion on modernizing the B.N.A. Act until the Conference in February 1971 where the notion of a general modernization of the existing constitution was included as part of the final item in the package of initial measures for constitutional reform. Although no specific proposals were put forward by the federal representatives, it was observed that if an early patriation of the constitution along the lines already discussed was to be achieved, there were certain other alterations in the text of the constitution which should logically be made at the same time. These would include an appropriate new title, a preamble reflecting Canadian objectives, and the deletion of spent and irrelevant provisions in the B.N.A. Act which would not have the effect of changing its substance. The Conference agreed that work should be undertaken to define the specific alterations of this nature which might be appropriate, for consideration at the next meeting in Victoria in June.

The meeting of federal and provincial ministers on May 31st took note of a draft federal proposal for modernization which included a Schedule listing the B.N.A. Act and other enactments which, together with the Charter, would collectively be known as the Constitution of Canada. The Schedule also listed suggested items within the respective enactments which

should be repealed, and proposed name changes for some enactments. The ministerial meeting did not examine this Schedule in detail, although it was observed that a large number of questions could be raised with respect to the suggested repeals. Instead, it was agreed that delegations would forward their comments on the Schedule to the Secretariat which would collate them for consideration at the Victoria Conference. It was also suggested that officials might get together at Victoria to examine the collected comments and identify issues prior to discussion of the matter by First Ministers. The Schedule, as well as four articles on modernization, were subsequently included as the final part of the draft Charter presented at Victoria.

During the Victoria Conference, a committee of officials met to carry out the task suggested by the ministers regarding the comments which had been received. The results of their discussions were then reported to the Attorneys General who had also been asked by the Conference to meet separately on this matter. After study, the Committee of Attorneys General recommended that the First Ministers should approve in principle the four Charter articles on modernization (including an amendment previously referred to with respect to the retirement of present Supreme Court judges), as well as the Schedule (see Appendix B for these texts later issued as part of the Victoria Charter). This recommendation was accepted by the Conference along with another recommendation that this approval be followed by an immediate individual review of the contents of the Schedule by the officials of interested governments. As previously reported, it was agreed that for this purpose the Secretariat would be authorized to receive submissions concerning the Schedule and to delete from the repeal column therein any provision on which objection was raised by June 23rd. However, no submissions concerning points of substance would be entertained following the Conference.

First Ministers also accepted the Attorneys General recommendation for the repeal of a number of constitutional provisions which would require abrogation for purposes of patriation or because of their replacement by specific provisions in the Victoria Charter. Several provinces commented on the absence of the existing reservation and disallowance provisions of the B.N.A. Act from the

repeal section of the Schedule; the federal government suggested that it would be willing to have these provisions included, and this was also agreed by the Conference.

The submissions regarding the Schedule which were received immediately following the Conference were to include points of substance which exceeded the Secretariat's mandate as expressed in Victoria. Accordingly, the Secretariat reported to the Chairman of the Constitutional Conference that it could not fulfil its instructions and proceed to the confirmation of the Schedule as had been foreseen in Victoria. On July 29th, delegations were informed that all proposals and comments received on the Schedule would remain on record with the Secretariat for examination when that might seem appropriate.

In view of the rejection of the Victoria Charter, no further action was taken with respect to the modernization of the constitution.

G. Mechanisms of Federal-Provincial Relations

It was Ontario which asked that the mechanisms of federal-provincial relations be included as one of the seven specific matters to be examined during the constitutional review, and the province felt strongly that the subject should be given high priority. The mechanisms of federal-provincial relations were discussed by the C.C.O. (see Chapter 4) both prior to and following the September 1970 Constitutional Conference, which agreed that the Continuing Committee should advance the examination of the subject and that it should be placed on the agenda of the next meeting of First Ministers.

At the Constitutional Conference in February 1971, the subject was discussed by the First Ministers, as one of the items in the "package" of initial measures of constitutional reform. At that time they also had before them working papers from Ontario and Alberta containing a number of specific proposals, and a Secretariat briefing paper on previous discussions in the C.C.O.

The Conference agreed that the revised constitution should contain a provision, probably in the

preamble, recognizing the important role of intergovernmental consultation and co-operation in the effective working of Canadian federalism. This was understood to be a non-enforceable or political obligation.

It was also felt that the constitution should provide for the basic mechanisms of federal-provincial consultation, by way of a specific provision that the Government of Canada would, at least once a year, consult the provincial governments as to the desirability of holding a Conference of First Ministers. This would involve the obligation to propose a Conference, but if it was agreed that there was insufficient need for a meeting, First Ministers would be under no constitutional obligation to meet within any fixed period of time.

The February Conference also looked at the proposal for establishing an obligation to consult, similar to the one above, concerning the need for an annual meeting of federal and provincial ministers responsible for economic and fiscal matters. It was generally agreed that such a constitutional provision was not necessary.

The view was expressed that there should be a statement in the constitution making consultation necessary where it was probable that one order of government would be affected significantly by the proposed actions of the other order of government. In addition, it was suggested that all governments should be kept aware of any bilateral arrangements between any two governments.

Finally, a number of governments suggested that the application of these basic mechanisms would be aided greatly by the establishment of a permanent secretariat for federal-provincial affairs. Some felt that the basis for such a secretariat existed in the Secretariat of the Constitutional Conference whose role could be expanded. No decision in this regard was taken.

The draft Charter examined at the Victoria Conference in June 1971 included an article providing for a Conference of First Ministers to be called by the Prime Minister of Canada at least once a year unless, in any year, a majority of First Ministers

decided that it should not be held. This article was agreed to by the Conference without debate, and subsequently included in the Victoria Charter (see Appendix B). In addition, two of the alternative preambles that had been proposed for the constitution during the Conference contained a reference to consultation and co-operation among the governments of the federation. However, First Ministers were unable to agree on the text of a preamble, and none appeared in the final Charter.

H. Other Subjects

As stated at the beginning of this chapter, the few subjects grouped in this section were discussed by the First Ministers although they do not fall within the seven main categories set out in February 1968. Two of the subjects described hereunder were considered during the examination of the draft Charter at Victoria; the third is the First Ministers' analysis of the constitutional review process which was carried out in September 1970.

(1) A preamble for the constitution

Although there had been numerous references to principles which should be reflected in a preamble to the constitution throughout the review, it was not until the Constitutional Conference in February 1971 that the specific question of a preamble was isolated and brought into focus. During this meeting it was proposed that if an early patriation of the constitution was to be achieved along the lines already discussed, the alterations in the text of the constitution which should logically be made at that time should include an appropriate new title and a preamble reflecting Canadian objectives. The First Ministers agreed and asked that the necessary work be undertaken in this respect.

A draft preamble was presented by the federal government to the ad hoc meeting of federal and provincial officials on March 29th. At that time it was agreed that comments would be welcomed. As a result, when the ad hoc meeting of federal and provincial ministers took place on May 31st alternative texts from Nova Scotia and Ontario had been added to the federal draft. These three texts were examined,

but no agreement on a single text was reached. Quebec questioned the value of a new preamble, suggesting that agreement on its content would be difficult until greater progress had been achieved on the substance of the constitution itself. The ministers agreed, however, that all three draft preambles should be referred to the First Ministers and that any additional comments in this regard should be forwarded to the Secretariat for collation before the Conference at Victoria. It was also suggested that consideration of the preamble should be withheld until the end of the Victoria Conference.

When the Victoria Conference convened, the First Ministers referred the three preambles as well as the comments and suggestions in this respect to a committee of officials for study. The officials subsequently reported to the federal and provincial Attorneys General who were also meeting separately during the Conference. After considering the officials' report, the Attorneys General reported to the Conference that it had proven impossible to reach agreement on the text of a preamble, as preferences continued to be split among the three drafts and at least two provinces opposed the inclusion of any preamble in the constitution.

On this basis the Conference decided to defer the formulation of a new preamble for the time being. However, it was agreed that the existing preamble to the B.N.A. Act should be deleted by way of the Schedule attached to the Modernization part of the Victoria Charter, as it was accepted that this could be effected without any adverse legal effects.

As for the question of a new title for the constitution, it was agreed that this could be covered in an article in the same Modernization part of the Charter (see Section F above).

(2) Provinces and territories

The draft Charter seen by the ad hoc meeting of ministers on May 31st, 1971, included a section entitled "Provinces and Territories", which was aimed at specifying the territorial components of Canada and declaring their parliamentary structures. At the Victoria Conference in June, First Ministers agreed to include these provisions in the final Charter (see Appendix B). There was no discussion of

substance, although Newfoundland asked that its proposal that the province be described as "Newfoundland and Labrador" be recorded.

(3) The constitutional review process

At the Constitutional Conference in December 1969 First Ministers agreed that they would examine the process for reviewing the constitution at their next meeting. For this purpose, a background paper was prepared by the Secretariat on the request and with the guidance of the Continuing Committee. On this basis, one comprehensive examination of the process for constitutional review was held by First Ministers during their Conference in September 1970; this followed very closely the considerations outlined in the Secretariat paper.

In commenting generally on the process, a number of First Ministers felt that progress was slow. However, many felt it was important to recognize the value of the work already done in providing a better understanding of the varied implications of the issues raised, and in enabling each First Minister to have a full appreciation of the views, interests and concerns of the others. Alberta argued for a greater differentiation between constitutional and day-to-day problems of federalism, suggesting more problems of the latter category should be dealt with through other existing or improved structures for federal-provincial consultation. Constitutional problems could be divided into primary and secondary subjects in order that efforts might be directed towards trying to resolve certain fundamental constitutional issues first. Ontario supported Alberta's views on this dual approach, and remarked that there might exist within the public some unrealistic expectations concerning the rate at which constitutional change could be achieved. The province also called for an early completion of the preliminary review stage of the constitutional exercise, particularly with respect to the distribution of powers.

The First Ministers agreed that it was important for the review process to continue, and for it to be completed as quickly as practicable. However, it was also recognized that in an effort to achieve an early completion of the task, the thoroughness of the review should not be sacrificed and current problems would continue to be dealt with in the normal way. In

response to the possibility that a committee of experts from outside government be asked to study the constitution and make recommendations concerning possible changes, First Ministers also agreed that the review would continue basically as a political process involving consultation between governments. While not rejecting the concept of the use of experts, many First Ministers felt that they should be looked at as part of the support structure which included the C.C.O., ministerial committees, and the Secretariat. Some delegations felt that outside experts should only be hired by governments, while others were of the view that the C.C.O. or the Secretariat should also have the necessary authority and resources in this respect.

During the same Conference, a number of First Ministers suggested that it was time to tackle the question of the procedure for effecting decisions concerning matters which were before them. First Ministers who had been pressing for early consideration of the amending formula argued that this formula might help clear up the question of the degree of consensus short of unanimity, which could be required in the future. There was also support for giving priority to the development of effective mechanisms of intergovernmental relations for dealing with current problems.

Another item of discussion concerned the comprehensive versus the partial approach to the constitutional review process. A comprehensive approach involved the examination of all aspects of the constitution before coming to conclusions on the form and content of any future constitutional document, whereas a partial approach involved agreeing on and implementing a few pressing amendments, which in turn implied that agreement would have to be reached on an amending formula for the existing constitutional document.

Since a number of provinces had already expressed interest in an early agreement on the amending formula, while others felt that certain specific amendments to the constitution would be required in the near future, the Conference concluded that the question of amending procedures should be given immediate attention.

In order to expedite the review, First Ministers also agreed to plan on two meetings of the Conference a year (Saskatchewan expressed preference for a single annual meeting) on the understanding that this would not prejudice the possibility of other meetings on current issues. Although opinions varied markedly, it was also agreed that Conferences would either be open or closed as circumstances dictated. In addition to the meetings of the Conference and its committees, bilateral consultations would be used, as appropriate, to examine specific constitutional questions, provided any arrangements arrived at during such encounters be referred back to the full Conference for approval.

In considering the work of the C.C.O., it was agreed that the First Ministers should give officials more specific direction, not only in respect to their work as a committee but also in respect to their role as spokesmen for individual governments. First Ministers also looked at the question of joint research projects, but were unable to agree on such a procedure, many feeling that governments should make individual arrangements for the research they required. An indication of the progress made until then on individual subjects considered in the review was attached to the conclusions of the meeting (see Appendix B).

The above discussions on the constitutional review process in September 1970 took place when the constitutional review was already well advanced. However, their influence was to be reflected in the subsequent work of the Conference and the discussions on an amendment formula.

PART III

THE CONSTITUTIONAL REVIEW - PROCEDURAL
AND ADMINISTRATIVE ASPECTS

Chapter 7 - The Methodology of the Constitutional Review

The approach adopted by the First Ministers regarding the work methods which would effect the examination of the constitution was marked by the same pragmatism which characterized the other aspects of the constitutional review. Generally, the Conference appears to have assumed that the procedures and organization which would be necessary for the proper development of the constitutional discussions should be examined and dealt with as requirements developed. While certain procedural questions were to require attention in the early stages of the review, little attempt was made to develop procedural guidelines in anticipation of events.

In retrospect, however, it is now possible to identify a number of elements regarding the general methodology of the review which evolved or were applied as the revision progressed. These have since become part of the review's procedural features. The following paragraphs seek to describe and analyse some of these elements.

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A. Conceptual Approaches to the Review

(1) A political process

From the outset the First Ministers recognized that the revision of the constitution would be a political process to be carried out under the direct supervision of the heads of the federal and provincial governments. A clear expression of this approach is given in the conclusions of the Constitutional Conference of September 1970:

The First Ministers considered the nature of the review, and it was agreed that it must continue as basically a political process, involving consultations between governments. At the same time, an essential part of the review was seen to be the preparatory and background work carried out by the existing committees of ministers, officials and consultants and by the Secretariat.

This approach was to have implications in various areas of the review and, in particular, on the decision-making process. At the ministerial committee level, it became clear as discussions progressed that delegates often saw their role as being limited to a further exploration of the various government positions, few attempts being made to arrive at decisions which could be recommended to the First Ministers. The same consideration applied more forcefully, although quite justifiably, at the level of officials. Similarly, the acceptance of the political implications of their actions was to lead governments away from their initial use of general statements which it had been agreed would not commit their authors. Gradually, these statements came to be replaced by theme papers often representing approved positions which evidenced all the political sensitivities involved. In the same sense, the desire for a certain candor in the discussions was to be one of the reasons for the use of closed sessions of the Constitutional Conference.

(2) Total vs. partial review

At the first meeting of the Constitutional Conference in February 1968, the First Ministers had listed seven subjects to be examined "without limiting" the process of constitutional review. After a year of organization and background work, the Conference was to further clarify its intent for a total review:

... to complete a comprehensive review of the Constitution of Canada, to assess its adequacy for present and future requirements, and to determine the extent to which constitutional change is desirable either through amendment of the existing Constitution or through promulgation of an entirely new Constitution.

There were however some initial differences of view preceding this decision for a total review by the First Ministers. It was proposed, for example, at the first meeting of the Continuing Committee of Officials in May 1968, that the Committee might proceed by limiting its examination to obvious possible amendments of the existing constitution, while another view held that constitutional revision should essentially be carried out through a study of the distribution of powers. In the end the process of review was to begin in the C.C.O. with the submission of general propositions covering the full range of both written and unwritten aspects of the constitution. Although this initial approach could not be continued indefinitely, the propositions formed a background against which the First Ministers could start examining more specific questions; the use of propositions had also confirmed that the discussions to follow would seek to cover all aspects of the constitution. The latter approach continued to be used until February 1971, when the First Ministers decided they would attempt to achieve a limited number of constitutional agreements in the immediate future.

(3) The "propositions approach" and theme papers

As noted above, the first year of the constitutional review was marked by the use of what came to be called subsequently the "proposition approach". This arose from a federal proposal made at the first meeting of the Continuing Committee for developing a systematic approach which would provide the means of examining not only the seven questions listed at the February 1968 Constitutional Conference, but all aspects of the Canadian constitutional structure. It was proposed that this could be effected by having all governments submit "propositions" setting forth basic concepts that it was felt should be examined during the review together with supporting material in explanation thereof. These propositions however were not meant to express, at that stage, firm statements of position.

This proposal was accepted, and a considerable number of propositions were submitted for examination by the C.C.O. Although contributions varied greatly, the combination of propositions submitted produced a comprehensive framework for discussion. These

discussions were reported to the Constitutional Conference in February 1969. The proposition approach was not continued after that date because of the decision to request the C.C.O. to deal immediately with the taxing and spending powers. However, it is recognized that the procedure had been helpful in initiating discussions on most aspects of the constitution and in encouraging an expression of views from all governments, even those which had previously shown only a limited interest in the general constitutional question.

Following the Constitutional Conference in February 1969, the Continuing Committee began to concentrate on a preliminary examination of specific subject areas. This in turn led to an emphasis on papers of greater length and substance than could be achieved in short propositional statements. These theme papers often reflected the policy positions of the submitting governments and their examination by officials or ministers was in fact part of the negotiation process through which agreements could be sought. In some cases, such as the federal papers on the spending and taxing powers, much of the initiative in guiding the thrust of the discussions thus fell to the federal government.

This procedure continued until the Constitutional Conference of February 1971 when it was decided to concentrate on reaching agreement on those subjects on which final agreement might be possible at that time. This last stage, which led eventually to the draft charter examined at the Victoria Conference in June 1971, was to be characterized by the preparation and study of draft constitutional provisions instead of more general working papers.

(4) Approach to the question of the distribution of powers

One of the issues on which substantial differences of view continued throughout the review process was the question of how to tackle the discussions regarding the distribution of federal and provincial legislative powers in the constitution. There were two aspects to the general issue. The first concerned the timing of the discussions within the revision process; the second involved the method

for tackling this subject once it had been agreed to proceed with it.

On the question of timing, although the distribution of powers had been included as one of the seven questions identified by the February 1968 Conference it was the view of the federal government that it would be desirable to begin with the rights of individuals (the charter of fundamental rights) and the central institutions of government with relevance to the federal system before proceeding to an examination of the federal and provincial legislative powers. For its part, Quebec took the position that the constitutional revision should essentially be carried out through a study of the distribution of powers and it was anxious therefore that detailed discussions in this area be initiated from the outset. In the end it was agreed to examine propositions on all subjects, including the distribution of powers. This was to be followed, after the Constitutional Conference of February 1969, by more extended discussions on selected topics.

As for the procedure for tackling the actual examination of legislative powers, there developed a divergence of opinions between delegations as to whether this should proceed on a "subject-by-subject" basis or in accordance with a previous "overview" of the totality of the federal and provincial legislative powers (the "grid approach"). An overview of its own total position on this subject had been presented by Quebec during the first months of the revision but subsequent discussions had been initiated by the federal government on the basis of analysing one function at a time. In this way, for example, the spending and the taxing powers had been brought forward for detailed and independent examination, supported by a mandate from the Constitutional Conference. There were considerable discussions amongst delegations in the Continuing Committee (with New Brunswick taking a leading role) on the merits of the two approaches. In the end, since many governments were not prepared to present a "grid", the federal pattern of analysing one function at a time continued unchanged.

B. Chairmanship of Committees

The chairmanship of meetings at all levels during the constitutional review was assumed in all cases by the senior federal representative. In the case of meetings of First Ministers, the Prime Minister of Canada assumed the role and title of "Chairman of the Constitutional Conference" with a responsibility for the Conference as a whole which was independent from his function as senior federal spokesman. Part of these chairmanship functions included consulting with the Secretary of the Constitutional Conference regarding general Conference procedures and organization. A similar Chairman-Secretary relationship existed at all levels of meetings.

The exercise of the dual role of chairman and of senior federal spokesman necessitated the occasional underlining of this distinction by the individual chairman when acting in one capacity or the other. Nevertheless, the identification of the capacity in which the chairman intervened was not always clear.

It might be noted that although the principle of a federal chairmanship of the Conference and its committees continued to be applied throughout the review, this was not without some reservations being expressed in this regard. During the first meeting of the Continuing Committee in May 1968 certain provinces questioned the compatibility of the two roles which the federal spokesman would have to play within the Committee. Alternatives proposed at that time included a rotational chairmanship or the appointment of an outside person. The question was raised again during the examination of the mechanisms of intergovernmental relations at subsequent meetings of the C.C.O., with Ontario expressing the view that federal-provincial meetings, with the exception of the First Ministers, should be free to choose their chairmen from amongst the respective delegations.

C. Delegates and Observers

The choice and number of delegates to the Constitutional Conference and its committees were

left to the discretion of each government. They were usually chosen from each government's own personnel. However, persons outside the federal or provincial Public Services were occasionally recruited to form part of delegations; this was especially true of the sub-committees which had a requirement for specialized expertise.

As a rule the senior representatives of each government on the Continuing Committee of Officials tended to remain unchanged, while the remainder of the respective delegations varied in accordance with the nature of the subject being examined at a particular time. The composition of specialized committees such as the ministerial committees or the sub-committees was usually characterized by personnel associated with the committee's subject matter, whereas both the C.C.O. and the Constitutional Conference usually represented a wider and more mixed array of professional backgrounds. In the more technical sub-committees, several governments could choose to be represented by a single person.

In the case of ministerial meetings, including those of First Ministers, the distinction between "delegates" and "advisers" was introduced in order to distinguish between ministers and officials within each delegation. A complete list of delegates for all meetings of the constitutional review is attached as Appendix C.

The attendance of observers at Constitutional Conferences was limited to open Conferences. The general principle followed was that only official delegates and advisers forming part of the respective delegations would be allowed to attend closed Conferences. It would appear that the rationale for the invitation of observers to be present at open meetings was based more on the proprieties of protocol rather than on any right to participate, and the seating of observers was usually set apart from that of the delegations themselves. The status of official observer, however, was not without significance for persons so selected since this meant a right to receive any non-confidential documentation produced for the Conference, invitations to social events and a listing in the official attendance records.

The selection of observers was left to the discretion of each delegation, but the privilege was

not always exercised. Equally it is not possible to ascertain which of those who were invited chose not to attend. It would appear that in the main the intention was to recognize persons whose position in Parliament or the Legislatures marked them as having a special interest in the review. In the case of the provinces whose practices were not uniform, their own selection was often based on information they might have regarding the expected federal observers. The limitation on numbers imposed by the available seating arrangements for a particular meeting applied to all governments.

Some delegations considered it appropriate to recognize the interest of opposition leaders in the constitutional question by inviting them to attend as observers. In the case of the federal government, the position of the former Prime Ministers of Canada and of the two Speakers was also recognized as appropriate. Other observers included M.P.s, Senators, M.L.A.s, municipal and academic officials, government members and officials from the Yukon and Northwest Territories. (See Appendix C regarding attendance at the Constitutional Conferences.)

With respect to the representation of municipal governments, it was agreed that decisions in this regard would be the responsibility of each provincial government. These could decide, if they so wished, to include municipal representatives as full participants in their delegations for either open or closed meetings; alternatively, they could designate them as observers only for open meetings. As to the two Territorial governments, they were not accorded independent representation by the federal government but were distinguished as territorial observers forming part of the federal delegation, not in the general observer group.

In those cases where the open Conference proceedings had to be adjourned for the purpose of holding a private meeting of First Ministers or in order to continue in closed session, observers present were excluded. The latter possibility led the federal Leader of the Opposition to refuse the Prime Minister's invitation to attend the opening session of the June 1971 Victoria Conference.

D. Confidentiality of Discussions

(1) Private vs. public meetings

All constitutional meetings at both the ministerial and officials' level were held in camera. The four exceptions were the Constitutional Conferences of February 1968, February 1969, December 1969 and the opening session of the June 1971 Victoria Conference when Conference proceedings were public.

As with the Confederation of Tomorrow Conference in November 1967, the first two meetings of the Constitutional Conference in 1968 and 1969 were televised. However, it soon became apparent that some advantage could be gained by resorting to closed meetings where, in addition to simpler administrative arrangements, it would be possible to pursue more direct and candid discussions with less public pressure. Time would also be saved by dispensing with opening statements which were a feature of open meetings. It was therefore decided during the second meeting of the Constitutional Conference in February 1969 to accelerate discussions by holding "informal working sessions with the Continuing Committee of Officials", although in fact there was no significant increase in the participation of officials. These "working sessions" were to become identified with the closed meetings of the Conferences and became the rule (although not always with unanimous agreement) for all subsequent meetings of First Ministers except for the Conference in December 1969 and the short opening proceedings of the Victoria Conference.

It should be noted that during both closed and open Conferences there were occasions when the First Ministers thought it desirable to meet privately in executive session without any officials present, although the Conference Secretary sometimes attended. This further degree of privacy was to prove very effective in accelerating Conference decisions.

(2) Publication of Conference documents

Although some Conference documentation was produced for immediate release to the public, such as the conclusions and the edited verbatim reports of public Conferences, the greater part of the documents produced during the review were intended to be restricted, at least initially, to the use of the participants. In the latter case, inter-governmental consultation was usually considered appropriate in instances where it was thought desirable that a particular document should be made available to the public. Examples of documents which were issued during the course of the review in this way include individual government "propositions", government position and working papers, reports of committees and of the Secretariat and the agendas for the meetings of First Ministers. In spite of advance agreements it was sometimes difficult, however, to ensure complete adherence to a single release date.

In the case of closed Conferences, it was agreed that no delegation would release Conference documents or statements before or during the proceedings, although sometimes papers were released afterwards. As for Conference agendas, these were, subject to agreement, released either immediately before the Conference or following the agenda's formal adoption at the opening session. The agendas and conclusions for meetings of First Ministers were also occasionally tabled in the House of Commons by the federal government.

In general, the constitutional revision documents which became available to the public served to provide information on the positions of individual governments rather than a continuing analysis and assessment of the progress of the review. While a number of released documents did have the latter purpose in mind, such as the Secretary's briefing paper on discussions within the Continuing Committee, the majority were designed to seek public support for individual positions being debated within the formal committee structure. Nonetheless, information on formal delegation positions provided a measure of public

participation which was not without effect. This was to be illustrated by the public reaction to the constitutional Charter in Quebec, following the Victoria Conference.

Two instances of unofficial disclosures of important Conference documentation were recorded during the review. The first occurred in September 1968 and concerned a number of Quebec "propositions" on the constitution which had been submitted previously to the C.C.O. by the Quebec delegation, and which subsequently appeared in a Toronto newspaper with an Ottawa dateline. Both the Quebec and the federal governments were of the view that the leak had not come from their midst. The incident was closed, with Quebec publishing shortly thereafter the full set of the propositions it had submitted in order to remove any inaccurate impressions which the unofficial and more limited publication might have created. A second instance occurred in January 1969 when a draft of a Secretariat briefing paper to be presented to the February 1969 Constitutional Conference fell into the hands of the press. Again, there was no success in ascertaining the source of the leak, but the final version of the document was subsequently released in accordance with plans which had been made prior to the leak.

E. Bilateral Discussions and Private Meetings of First Ministers

(1) Bilateral discussions

Private discussions between the federal government and individual provinces regarding the process and subject matter of the constitutional review were an important part of the consultative machinery used during the review. Four series of such bilateral discussions, each of which was undertaken by the federal Minister of Justice, can be identified.

The first series took place in January 1968, as part of the preparations for the first Constitutional Conference, when Mr. Trudeau, then the federal Minister of Justice, visited each Premier

for the purpose of a preliminary exchange of views regarding the Conference agenda and the proposed federal charter of human rights. The same practice was to be followed prior to the second Constitutional Conference in February 1969, with Mr. Turner having informal discussions in each province regarding the federal bill on official languages and the general federal programme on the constitution. In addition to exposing the federal positions and views, these discussions were to contribute to the development of a common understanding of some of the constitutional issues and facilitate in some measure the multilateral discussions that were to follow.

A third and fourth series of bilateral consultations were held by Mr. Turner with each Premier following the Constitutional Conferences of September 1970 and February 1971 regarding the "package" of constitutional provisions which were to be incorporated eventually in the Victoria Charter. Exploratory talks on the possibility of an agreement on a limited number of constitutional reforms were held in January 1971, following the decision which had been taken at the previous Constitutional Conference to carry out consultations between individual governments and to examine the question of an amending formula. Mr. Turner visited each provincial capital again in April 1971 in order to discuss a number of draft constitutional texts which had been prepared by the federal Department of Justice following the First Ministers' decision in February 1971 to patriate a constitution incorporating new constitutional provisions. Both of these instances marked a definite shift of accent from the multilateral to the bilateral process, and were part of the private consultation and bargaining which would lead to the Victoria Charter.

In addition to the above, the occasional meetings of individual Premiers with the Prime Minister in Ottawa for the purpose of general discussions provided other occasions for bilateral consultations on the constitutional review. It must also be assumed that numerous additional personal contacts must have taken place on a continuing basis between officials and ministers of the eleven governments.

(2) Private meetings of First Ministers

These took place during the formal proceedings of certain Constitutional Conferences as well as during private dinners given by the Prime Minister.

Conference proceedings were sometimes adjourned so that the First Ministers might continue their discussions in private executive sessions from which both their officials and other ministers were excluded. These private meetings provided an opportunity for more free and direct exchanges and usually resulted in decisions regarding the programme of work or in agreement on subjects under review. This technique became an essential part of the general Conference procedures for achieving forward movement. This was particularly true of the five-hour executive session held on the last day of the Victoria Conference during which agreement was reached on a number of points which had eluded the plenary Conference, as well as on the procedure and deadline for the consideration of the proposed Charter by each government following the meeting (federal and provincial Attorneys General were invited to attend for a specific purpose during a part of this private session).

The Prime Minister's private dinners restricted to Premiers only (or on occasion a representative) - a feature of most Constitutional Conferences - were other opportunities for free and informal discussions during which agreements could be consolidated and Conference proceedings sketched out. Although little is known about what took place during these gatherings, the following day's Conference discussions sometimes reflected these consultations. During one such instance, the Prime Minister's supper on the eve of the February 1971 Conference, the First Ministers were able to develop considerable consensus regarding the possibility of patriating the constitution and adopting a new amending formula. The importance of these discussions was specially underlined in this instance when, on the following day, the Conference was adjourned so that the two Premiers who had not attended the supper might be briefed on what had taken place. Similarly, the Prime Minister's dinner on the eve of the Victoria Conference was to provide an opportunity for reaching an initial understanding

on the general procedure to be followed during the subsequent Conference discussions.

F. Procedure for Effecting Conference Agreements

(1) Use of the "consensus"

There was no formal mechanism for determining when agreement had been reached during the course of the constitutional review. It had been generally agreed during the first Conference in February 1968 that the use of formal motions and votes would be undesirable. During this same Conference, the Prime Minister of Canada had also expressed serious reservations with respect to the suggestion that part of the Consensus on Language Rights might be stated in terms of a "majority" agreement only.

The mechanism for determining whether an agreement had been reached or a recommendation could be made usually called for the chairman of the meeting to formulate the nature of the agreement or recommendation that appeared to be emerging from a particular discussion, and to submit his assessment to the delegates for their own confirmation. Whatever modifications delegates might then feel were necessary as well as alternate proposals were similarly presented through the chairman. Any agreement was subsequently recorded in the Secretariat summary record of proceedings and in other reports where applicable. All questions were subject to final consideration by the First Ministers.

A modification to this procedure was introduced during the Victoria Conference when it was decided that a delegation which had a reservation concerning any constitutional provision in the draft Charter, but which did not wish its position to prevent an overall Conference agreement, could express its "reluctant agreement" to the provision and have the nature of its reservation noted by the Secretariat. Such reservations would only hold in the event that overall agreement on the Charter could not be reached during the Conference.

(2) Initial absence of plan for implementation of possible constitutional agreements

Until the Constitutional Conference of September 1970, where it was agreed "that the examination of the question of amending procedures should now be given attention" and following which the amending formula as well as the mechanisms for patriation were to be discussed, there was little consideration given at either the Continuing Committee or Conference levels to the procedure which would be required for the implementation of any agreements that could be reached during the constitutional review. Similarly, although individual governments might have had their own timetables for the comprehensive review of all constitutional questions, the Conference as a whole was able to proceed without any initial comprehensive "game plan" other than the seven questions which had been referred for study in February 1968.

The decision to consider an amendment formula and the patriation of the constitution following the September 1970 Conference was, in contrast to the previous period, to initiate a period of review during which objectives in terms of substance and of time could be contemplated. The February 1971 Conference was to identify the major questions which First Ministers hoped to resolve at the Victoria meeting in June as well as outline the steps which could be used to patriate the constitution following an agreement in June. This scenario was followed as planned until interrupted by the Quebec government's rejection of the Victoria Charter following the June Conference.

(3) Procedure leading to Victoria Charter

The procedure for the discussions which were to lead to the submission of a draft charter of specific constitutional provisions at the Victoria Conference was characterized by a number of bilateral discussions at the ministerial level between the federal and each of the provincial governments. Although the question of the amending formula was discussed at both the 13th and 14th meetings of the Continuing Committee of Officials in accordance with the First Ministers' request in September 1970 that

the Committee should "carry out detailed investigation of the ways of amending the Constitution", the September 1970 Conference had also agreed that individual governments could submit their views directly to the federal Minister of Justice who would decide if any real progress was possible. On the basis of the provincial submissions, Mr. Turner visited each Premier in January 1971 to discuss the amending formula, patriation and other possible constitutional reforms and it was apparently on the basis of these bilateral consultations that the next meeting of First Ministers in February 1971 was able to formulate the "elements" which it was felt should be included in the proposed new constitutional provisions. This departure from discussions within the regular committee structure was recognized by the February 1971 Conference when it decided that "the next steps would include further bilateral discussions leading up to the next meeting of First Ministers, and in addition as required, the on-going coordinating work of the Continuing Committee of Officials". There were, however, to be no further meetings of the C.C.O., although an "ad hoc meeting of senior officials" was convened at the end of March. An additional series of bilateral consultations between Mr. Turner and each province took place in April; these in turn were followed by a meeting of Attorneys General in Ottawa at the end of May and by the subsequent submission of a draft constitutional charter in Victoria in June.

G. The Role of Documents

(1) Secretariat summary records

A confidential summary record for the use of participants only was prepared by the Secretariat following each meeting during the constitutional review, with the exception of the two technical Sub-Committees on Sales Taxes and Death Duties. This applied to meetings of officials or ministers, as well as to all meetings of First Ministers including those for which a verbatim record was subsequently made available (no summary record was produced for the February 1968 Conference since the Secretariat had not yet been established). Each summary record

summarized the main points raised by each delegation and any conclusions reached on the various subjects discussed during the meeting. They were prepared by the Secretariat on the basis of detailed notes taken during the meeting and by using the verbatim record where available. The record was then circulated to delegations with the indication that any comment regarding the Secretariat interpretation of the discussions would be circulated separately as an addendum to the summary record.

In addition to providing a summary of discussions, these documents were used as a basis for further discussions and as a record of conclusions reached. They were the main instrument through which the variety of views and positions could be digested and organized so as to ensure continued forward progress in the intergovernmental discussions. There were few instances of serious disagreement with the Secretariat's interpretation of discussions, its role as an objective and independent reporter of the various positions being accepted.

(2) Discussion papers and reports

Documents on the substance of the review submitted by individual delegations were classified by the Secretariat as "position papers" or "working papers" depending on whether they represented a governmental position or more informal notes for discussion. Briefing papers on discussions which had taken place and background information regarding subjects under review were also prepared by the Secretariat and circulated as Secretariat "working papers" or "background papers". The "reports" to the Conference from committees of ministers or officials were usually prepared in draft form by the Secretariat for submission by the respective committees. The Secretariat also occasionally submitted its own reports to the First Ministers regarding the constitutional review activities. Notes on these various types of documents follow.

"Position papers" reflecting the formal views of a delegation on a particular constitutional question were, in general, mostly limited to the formal statements made by governments during meetings of the Constitutional Conference. They also included some policy papers such as the federal document on "Federalism for the Future". These papers permitted an identification of governmental policies and a point of departure from which discussions and negotiations could take place. The "working papers", however, were a more popular and fruitful instrument for discussions since they did not reflect firm positions and could be used to invite a common approach to the study of constitutional issues. Their first general use occurred with the submission and study of propositions on the constitution within the Continuing Committee. Subsequently they were to be used for the presentation of views on those questions that were to be examined in detail, for instance the taxing and spending powers. This technique was followed at both the official and ministerial levels as the main vehicle for expressing respective governmental views.

Working papers prepared by the Secretariat were meant to provide a summary of the discussions that had taken place within the C.C.O. or a ministerial committee for the use of the First Ministers (in which cases they were also designated as "briefing papers") or to otherwise assist the consideration of individual questions. The latter category included Secretariat comments on the programme of work and on procedures and organization for the review. Background information on subjects under review, such as extracts from other constitutions, was made available by the Secretariat in the form of "background papers" prepared on request or on its own initiative. This type of document was also used to provide delegates with check lists and summaries concerning the overall review process.

The "reports" issuing from one committee level to another within the constitutional review structure were the formal instruments for communicating the state of progress that had been achieved at any one level. They were also used to communicate the results of studies on particular subjects that had been requested by the First Ministers. In nearly all cases these were prepared in draft form by the Secretariat for review and approval by the issuing committee. The nature and usefulness of these documents were

usually a reflection of the progress that had been made within the respective committee discussions. Thus while some reports, such as that of the Committee of Ministers on the Senate, were largely perfunctory, others were able to facilitate a further discussion of the issues. In no case, however, were these documents deemed to be substitutes for the individual private briefings which each delegation was expected to provide for its government.

It might be noted that only one report on the general constitutional discussions was made by the Continuing Committee to the Constitutional Conference, in February 1969, although the Committee continued to report on requests made by the First Ministers for the examination of specific questions. Summaries of the general discussions in the C.C.O. were presented to the First Ministers in the form of Secretariat "briefing papers".

(3) Conference conclusions

A statement of "conclusions" was issued following each of the seven Constitutional Conferences, those for the first Conference only taking the form of a "consensus" and of "proposals" adopted by the Conference. These conclusions served to record the progress made and the decisions taken by the First Ministers as well as to indicate the general direction the review process would be expected to take between formal Conferences. Both questions of procedure and decisions on substance were covered.

As the majority of the constitutional discussions were in camera, these conclusions constituted a continuing source of public information regarding the developing status of the review. For the participants in the review, both officials and ministers, they served as the authoritative register of the First Ministers' directions regarding their own work and as general guidance for the on-going conduct of the review.

The task of preparing an initial draft of the conclusions for each Conference was given to the Secretariat early in the review in recognition of the independent and neutral approach this body could take to formulate the expressed views of all

governments. The procedure was for the Secretariat to circulate a draft during the Conference so that comments from individual delegations could be received and collated for incorporation into a second draft which was then circulated for the final review and approval of the First Ministers. The discussion of the draft conclusions often provided the necessary catalyst for the finalization of agreements that had remained until then either uncertain or undefined. They also called for concentrated exercises of negotiation in which the federal government was often able to use its central position for resolving remaining issues and for influencing the direction of the future discussions.

(4) Verbatim records

It was agreed at the first meeting of the Continuing Committee in May 1968 that no tape recording or other type of verbatim record of the Committee's proceedings would be made. This decision was to also apply to the sub-committees of officials and to the ministerial committees throughout the review.

As for the meetings of First Ministers, a verbatim record had been taken and subsequently published in an edited form for the first open Conference in February 1968; this practice continued to be followed for the two subsequent open Conferences in February and December 1969. In the case of the closed meetings no verbatim record was taken for the Conference of June 1969. However, for the September 1970 Conference it was decided that such a document would be helpful to the Secretariat for purposes of preparing the usual summary record. This precedent was followed for the following two Conferences in February and June 1971. In addition, as interest had been expressed regarding the usefulness of the document for delegations themselves, it was agreed that one copy of the unedited and unofficial verbatim record would be made available to each of the eleven First Ministers for the internal and confidential use of their respective delegations only. This arrangement left the Secretariat summary record as the only official record of the proceedings for each Conference.

H. The Role of the Continuing Committee of Officials

The actual work of the C.C.O. has already been described in Chapter 4. The approach which was adopted by this Committee in its task was set out as follows in its first report to the Conference in February 1969:

It was clear to all participants from the outset that the Continuing Committee could not and should not presume to take decisions. The Committee felt that it should seek to assist the Constitutional Conference by attempting to identify and define problems, by seeking to clarify issues, and by helping to focus attention on the questions requiring the consideration of First Ministers.

During the course of the review, the C.C.O.'s role as an instrument for the clarification of issues for the attention of First Ministers was applied to most subjects examined by the Conference, a position which in turn was to provide heads of government with a permanent group of advisers regarding the overall revision process. This unique position of the Continuing Committee as the First Ministers' main continuous source of advice was recognized early in the review in the proposals at the end of the first Conference; it was later consolidated by the Committee's submission in February 1969 of a report on the procedures which the First Ministers could adopt to ensure a comprehensive review of the constitution, including the seven questions that had been listed by the Conference in 1968. The C.C.O.'s role in this respect continued throughout the revision process until February 1971, when it was decided to emphasize bilateral negotiations as part of the procedures which were to lead to a draft constitutional charter.

The Continuing Committee's position was also notable in that it was often the first forum in which detailed discussions could take place and initial expertise developed. When certain issues were subsequently referred to ministerial committees, the C.C.O. continued to retain a "watching brief" over developments for the purpose of providing advice to the First Ministers. This latter function in turn

accorded with the First Ministers' own expectation that they would be able to use members of the C.C.O. both formally through the Committee's reports, and privately in briefings from their own representatives as a continuing central point of information concerning all aspects of the constitutional discussions.

Continuing Committee members also usually acted as the focal point for each government's contact with the Secretary of the Conference. This made possible an additional source of general information which served to facilitate each delegation's own participation in the review process.

I. The Role of the Secretariat

The Secretariat of the Constitutional Conference was the main instrument available to the Conference for the organization of the constitutional discussions. The principal role of the Secretariat was to provide the mechanisms through which an orderly and integrated discussion of issues at all levels could take place. A detailed description and analysis of the Secretariat's functions in this respect is given in the following chapter.

Chapter 8 - The Role of the Secretariat of the Constitutional Conference

A. Establishment of the Secretariat

The Secretariat of the Constitutional Conference was established following a decision of the Constitutional Conference in February 1968 to provide continuing machinery for the process of constitutional review then being undertaken. The nature of the Secretariat envisaged at that time was indicated as follows by the Rt. Hon. L.B. Pearson:

...a secretariat to make arrangements for preparing and sending out agendas, and doing all the work that secretariats do, such as keeping a summary record of the proceedings and doing all the detailed work that will be required.

We have proposed that the federal government should provide these basic secretarial services, as it has for other federal-provincial conferences, but with this change or understanding: that provinces might like to second representatives from the provinces as members of this secretariat in order to ensure the maximum amount of co-ordination. We will take the responsibility for setting up the secretariat, and we would hope that provincial nominees could take part in the work of that secretariat. I hope that that procedure will be satisfactory. We look upon the secretariat's role, of course, as being mainly an administrative one.

Shortly thereafter steps were taken by the federal government to give effect to this decision and the first Secretary of the Constitutional Conference, Mr. Edgar Gallant, was appointed by the Prime Minister of Canada in May 1968 following consultation with all the provinces. It was foreseen that the Secretary would be responsible to the Prime Minister as Chairman of the Constitutional Conference and that services would be provided to the Conference and all its committees.

B. Functions of the Secretariat

Discussions regarding the role which the Secretariat would be expected to play took place early in the review and it became evident that there were some initial differences of opinion in this regard. These appeared to have revolved around the question of determining the Secretariat's involvement in research and the development of policy and technical studies, as well as around the administrative question of possible joint federal-provincial financing of the Secretariat's operations. It was eventually concluded that the S.C.C. should not be associated in any way with policy development in the federal or provincial governments nor would it be expected to initiate its own programme of studies. By thus avoiding identification with particular policy positions the neutrality of the Secretariat and its equal responsibility to all governments would be preserved. As for joint financing, although it was generally agreed at the first Continuing Committee meeting that a sharing formula should be considered, the question was never pursued further and the federal government continued throughout the review to claim, as well as assume, full financial responsibility. Voluntary contributions, however, were received from two provinces: two from Ontario in 1969 and 1970, and a contribution from Prince Edward Island in 1971.

The Secretariat's services were to develop and expand as the rate of the constitutional review progressed, so that eventually the S.C.C. was serving not only the Conference of First Ministers and the C.C.O. but also all the ministerial committees as well as all sub-committees and working groups. In December 1969, the Secretariat was given the additional responsibility of providing services for the non-constitutional meetings of First Ministers.

These Secretariat functions can be divided into four main categories: programme services, information services, documentation and general physical arrangements.

(1) Programme services

These provided the focal point for all the Secretariat functions. In the periods preceding

meetings the programme services were concerned in general with the planning and the co-ordination of the discussions that were expected to take place. This meant the assumption of responsibility by the Secretariat for the exchange of correspondence, the preparation of agendas, briefing books, background information papers and of discussion guides for the use of delegates (see also Chapter 7). The Secretariat also assisted committees in the planning of their programme of work and advised individual chairmen on procedures.

In the periods following meetings, the programme services were responsible for preparing analytical summary records of the discussions for the use of delegates. In the case of meetings of First Ministers, this responsibility was eventually extended to include the preparation of draft conclusions which the First Ministers would approve for publication following each of their Conferences.

Finally, the programme services of the Secretariat were responsible for the initial drafting of reports between the various committee levels, and for expediting follow-up action on the proceedings of a meeting.

(2) Information services

From the outset of the constitutional review, it was recognized that the volume and complexity of the expected documentation would assume proportions which would make retrieval from ordinary filing systems impossible. Accordingly, the Secretariat began implementing in 1968 a computerized system for the storage and rapid retrieval of information on any aspect of the constitutional review. The system became operative early in the review, providing participating governments with complete information on any given subject within the review on the basis of the relevant documentation in each case.

In this connection it might be noted that in order to discharge its responsibilities more effectively, the Secretariat attempted throughout the review to develop and to maintain relations with governments at appropriate levels. It tried in this way to keep informed of their participation in the constitutional revision and to act as a continuing

link between members of the various committees in the periods between meetings.

(3) Documentation

The documentation service provided by the Secretariat assumed its major role in the periods immediately surrounding each meeting. It was the responsibility of this service to ensure the timely preparation, translation, printing and distribution of documents to all delegates for a particular meeting. During meetings, especially those of the Constitutional Conference, this included controlling the proper distribution of discussion papers, statements and communiqués to the Conference floor and, when appropriate, to the news media. The documentation service also extended to the post-Conference demands made by embassies, libraries and the general public for the provision of documents that had been made public.

(4) General physical arrangements

The Secretariat also assumed responsibility for the provision of all physical arrangements connected with each meeting, whether held in or outside of Ottawa. This included such traditional arrangements as those for travel, hotel accommodations and the provision of secretarial services, as well as the responsibilities for press and security arrangements and for the provision of simultaneous interpretation, court reporters and printing services.

C. Administrative Organization of the Secretariat

Although the Secretariat was considered independent of the federal government by virtue of its responsibility to the eleven governments engaged in the constitutional review, it remained attached to the federal Privy Council Office for administrative purposes, as well as subject to the administrative rules regulating departments of the federal government. As previously noted, its financing continued to be

met as a federal responsibility, although three voluntary provincial contributions were made to its operating costs. The Secretariat prepared its own budget for submission to the federal Treasury Board through the Privy Council Office.

The power to appoint the Secretary was considered to be the prerogative of the Prime Minister of Canada to be exercised in consultation with each of the provincial governments. The second Secretary to serve the Conference, Mr. Henry F. Davis, was appointed in July 1969. Selection of the Secretariat staff was effected by the Secretary through recruitment from within the federal Public Service and by hiring outside personnel under contract. There were also some secondments from provincial governments for limited periods of time which helped to emphasize the intergovernmental character of the Secretariat.

Proposals Regarding the Secretariat Advanced during the Constitutional Review

During the course of the review suggestions were made by certain governments with respect to the possible role the Secretariat might play in the non-constitutional area, in addition to the administration of non-constitutional meetings of First Ministers. However, these proposals did not lead to any further expansion of the Secretariat's functions outside the constitutional domain.

One of the first such proposals came from Ontario which had expressed interest in the mechanisms of federal-provincial relations from the beginning of the constitutional review. This was followed later by its suggestion that the S.C.C. might evolve into a permanent Intergovernmental Affairs Secretariat, financed by all governments, to serve as a clearing-house for the exchange of information in general intergovernmental affairs and as a monitor on the activities of the various intergovernmental committees and sub-committees. Alberta, in a working paper published in January 1971, also expressed interest in a central secretariat and thought that the S.C.C.'s role might be expanded to encompass, for administrative purposes, the intergovernmental activities of the existing federal-provincial committees. A similar proposal was made by Quebec which suggested in February

1971 that it would be useful to enlarge the role of the S.C.C. to that of an intergovernmental secretariat for federal-provincial relations.

These proposals, as well as the feeling in some quarters that the effectiveness of intergovernmental consultations might be improved through the provision of administrative services by a permanent intergovernmental agency, were to lead the federal government to submit a paper to the November 1971 Federal-Provincial Conference examining the desirability of extending the Secretariat's functions to non-constitutional federal-provincial meetings at the ministerial level. However, the discussions on this last proposal have so far remained inconclusive.*

E. Present Status of the Secretariat

There being no additional constitutional review meetings planned for the foreseeable future following the rejection of the Victoria Charter, and no extension of the Secretariat's functions having been agreed upon, the Prime Minister of Canada advised the Secretary on December 13, 1971, that the S.C.C. would be curtailed and its staff re-assigned to other positions. The position of Secretary, however, has been retained for the time being, and the Secretariat records of the constitutional review remain intact in order to facilitate a re-activation of the operation should this be desired at some later date. It should be noted that the Secretariat's curtailment has also had the effect of terminating, temporarily at least, the administrative services which it had provided to non-constitutional Federal-Provincial Conferences.*

* In May 1973 the Secretariat of the Constitutional Conference was superseded by the Canadian Intergovernmental Conference Secretariat (CICS) which was established by the federal and provincial First Ministers to serve their own meetings as well as other intergovernmental conferences in Canada. This new body, which the author as former Secretary of the Constitutional Conference was designated to head, has become the custodian of the records of the constitutional review.

APPENDIX A

AGENDAS

(i) AGENDAS: CONSTITUTIONAL CONFERENCE

CONSTITUTIONAL CONFERENCE

FIRST MEETING

FEBRUARY 5-7, 1968

AGENDA

1. Opening statements
2. Rights of Canadians
 - (a) Recommendations of the Royal Commission on Bilingualism and Biculturalism
 - (b) A constitutional Bill of Rights
3. Further constitutional review
4. Questions of regional disparity
5. Other matters

CONSTITUTIONAL CONFERENCE

SECOND MEETING

FEBRUARY 10-12, 1969

AGENDA

1. Opening Statements
2. Objectives of the Constitutional Conference
 - (a) General
 - (b) Report of the Continuing Committee
 - (c) Procedure for Constitutional Review
3. The Objectives of Confederation and Basic Principles of the Constitution
4. Specific Constitutional Questions:
 - (a) Official Languages
 - (b) Fundamental Rights
 - (c) Distribution of Powers (including constitutional aspects of taxation and spending powers)
 - (d) Reform of Institutions linked with Federalism
 - (e) Regional Disparities
 - (f) Amending Procedure and Provisional Arrangements
 - (g) Mechanisms of Federal-Provincial Relations
5. Other Questions

CONSTITUTIONAL CONFERENCE

FIRST WORKING SESSION

JUNE 11-13, 1969

AGENDA

1. Distribution of Powers in the Constitution:
 - (a) The Taxing Powers
 - (b) The Spending Powers
2. Constitutional Aspects of Regional Disparities
3. Progress Reports from Committees of Ministers
4. Programme of Work for the Constitutional Review
5. Other Business

CONSTITUTIONAL CONFERENCE

THIRD MEETING

DECEMBER 8-10, 1969

AGENDA

1. Division of Powers:
 - (a) Income Security and Social Services
 - (b) The Spending Power: Federal Grants to Provincial Governments
 - (c) Taxation
2. Regional Disparities
3. Reports from Committees of Ministers
4. Future Programme of Work
5. Other Business

CONSTITUTIONAL CONFERENCE

SECOND WORKING SESSION

SEPTEMBER 14-15, 1970

AGENDA

1. The Constitutional Review Process
2. Environmental Management
3. The Capital Market and Financial Institutions
4. Progress Report from the Committee of Ministers on Official Languages
5. Reports from the Continuing Committee of Officials:
 - (a) Taxing Power - Sales Taxes
 - (b) Taxing Power - Death Duties
 - (c) Regional Disparities - Constitutional Obligation
 - (d) Paramountcy as applied to Public Retirement Insurance
6. Other Business

CONSTITUTIONAL CONFERENCE

THIRD WORKING SESSION

FEBRUARY 8-9, 1971

AGENDA

1. Mechanisms of Federal-Provincial Relations
2. Environmental Management - Pollution
3. Social Policy
4. The Amending Formula
5. Canadian Common Market
6. Other Business

FEDERAL-PROVINCIAL CONSULTATION ON CURRENT MATTERS

1. Unemployment
2. Transportation to Northern Resources

CONSTITUTIONAL CONFERENCE
VICTORIA, BRITISH COLUMBIA

JUNE 14-16, 1971

AGENDA

1. Opening Proceedings
2. Constitutional Discussions
3. Social Policy
4. Other Business
5. Closing Proceedings

(ii) AGENDAS: CONTINUING COMMITTEE OF OFFICIALS

CONTINUING COMMITTEE OF OFFICIALS

FIRST MEETING

MONT GABRIEL, P.Q.

MAY 29-30, 1968

AGENDA

1. Procedures and organization
2. Possible ways of handling the process of constitutional review
3. Questions to be examined by the Conference and the Committee:
 - (i) subjects listed by the Conference:
 - (a) official languages
 - (b) fundamental rights
 - (c) distribution of powers
 - (d) reform of institutions linked with federalism
 - (e) regional disparities
 - (f) amending procedure and provisional arrangements
 - (g) machinery of federal-provincial consultation
 - (ii) other subjects
4. Other matters

CONTINUING COMMITTEE OF OFFICIALS

SECOND MEETING

JULY 25-26, 1968

AGENDA

1. Method of handling the process of constitutional review
2. Specific questions to be examined by the Conference and Committee
3. Programme of work and calendar of meetings
4. Other business

CONTINUING COMMITTEE OF OFFICIALS

THIRD MEETING

SEPTEMBER 25-26, 1968

AGENDA

1. Programme of the meeting
2. Review of propositions
3. Future programme of work for the Committee and the Constitutional Conference
4. Calendar of meetings
5. Other business

CONTINUING COMMITTEE OF OFFICIALS

FOURTH MEETING

NOVEMBER 7-9, 1968

AGENDA

1. Brief discussion of progress of work
2. Continuation of discussion of Propositions
 - (a) Completion of discussion of Basic Principles
 - (b) Fundamental Rights
 - (c) Constitution of the Central Government
 - (d) Constitutions of the Provincial Governments
3. Preliminary discussion of Distribution of Powers
(Examination of the principles underlying the distribution of powers in the existing Constitution)
4. Preparation for the December Constitutional Conference
 - (a) Form of report to the Conference
 - (b) Possible items for Conference agenda
 - (c) Administrative arrangements
5. Other matters

CONTINUING COMMITTEE OF OFFICIALS

FIFTH MEETING

DECEMBER 3-5, 1968

AGENDA

1. Preparations for December Conference -
 - (a) report of Continuing Committee
 - (b) Secretary's report on deliberations of the Committee
 - (c) other aspects
2. Examination of propositions -
 - (a) division of powers
 - (b) constitution of central government
 - (c) constitution of provincial governments
 - (d) constitution of the judicial system
3. Other matters

CONTINUING COMMITTEE OF OFFICIALS

SIXTH MEETING

APRIL 16-18, 1969

AGENDA

1. Programme of Work for the Constitutional Review
2. Distribution of Powers - Spending and
Taxing Powers
3. Constitutional Aspects of Regional Disparities
4. Other Business

CONTINUING COMMITTEE OF OFFICIALS

SEVENTH MEETING

MAY 22-23, 1969

AGENDA

1. Arrangements for the First Working Session of the Constitutional Conference, June 11-13, 1969
2. Distribution of Powers - The Taxing Power
3. Distribution of Powers - The Spending Power
4. Constitutional Aspects of Regional Disparities
5. Committees of Ministers
6. Programme of Work and Schedule of Meetings
7. Other Business

CONTINUING COMMITTEE OF OFFICIALS

EIGHTH MEETING

SEPTEMBER 30 - OCTOBER 1, 1969

AGENDA

1. The Taxing Powers:

- (a) Detailed examination of the following questions concerning death duties:
 - (i) the implications of exclusive federal jurisdiction
 - (ii) the implications of exclusive provincial jurisdiction
 - (iii) the implications of a provincial estate tax rather than succession duties (joint jurisdiction)
 - (iv) the problem of adapting the federal estate tax laws to take account of the civil code
- (b) Detailed examination of the problem of ensuring how a provincial indirect sales tax could be kept "within the province"

2. The Spending Power:

Alternative formulae for determining a national consensus

3. Regional Disparities:

The implications and problems in providing a constitutional obligation

4. Programme of Work and Schedule of Meetings
5. The Constitutional Review Process
6. The Role of the Secretariat
7. Preparations for the December Meeting of the Constitutional Conference
8. Other Business

CONTINUING COMMITTEE OF OFFICIALS

NINTH MEETING

NOVEMBER 17-19, 1969

AGENDA

1. Income Redistribution and Social Security
(Consideration of federal paper on Income Security and Social Services)
2. The Taxing Powers:
 - (a) Consideration of a report from the Sub-Committee on Sales Taxes
 - (b) Consideration of a report from the Sub-Committee on Death Duties
 - (c) Real property taxation
3. The Spending Powers:
 - (a) Alternative formulae for determining a national consensus
 - (b) Compensation to non-participating provinces
(Consideration of draft Secretariat briefing paper)
4. Regional Disparities:

Constitutional obligations (consideration of draft Secretariat briefing paper)
5. The Approach to the Study of the Distribution of Powers
6. Preparations for the December Meeting of the Constitutional Conference
7. Other Business

CONTINUING COMMITTEE OF OFFICIALS

TENTH MEETING

MARCH 23-24, 1970

AGENDA

1. The approach to the study of the distribution of powers
2. A non-enforceable constitutional obligation for the reduction of regional disparities
3. The question of paramountcy as applied to public retirement insurance
4. Economic growth
5. Other business

CONTINUING COMMITTEE OF OFFICIALS

ELEVENTH MEETING

BANFF, ALBERTA

JUNE 15-17, 1970

AGENDA

1. Report from the Sub-Committee on Death Duties
2. Report from the Sub-Committee on Sales Taxes
3. The Question of Paramountcy as Applied to
Public Retirement Insurance
4. Regional Disparities
5. Environmental Management
6. Aspects of Economic Growth
7. Other Business

CONTINUING COMMITTEE OF OFFICIALS

TWELFTH MEETING

AUGUST 31 - SEPTEMBER 1, 1970

AGENDA

1. The Constitutional Review Process
2. Capital Markets and Financial Institutions
3. Environmental Management
4. Covering report on Sales Taxes
5. Covering report on Death Duties
6. Report on Regional Disparities - Constitutional Obligations
7. Paramountcy as applied to Public Retirement Insurance
8. Mechanisms for Federal-Provincial Relations
9. Preparations for meetings of First Ministers - September 14-16
10. Other Business

CONTINUING COMMITTEE OF OFFICIALS

THIRTEENTH MEETING

NOVEMBER 30 - DECEMBER 1, 1970

AGENDA

1. Environmental Management
2. Paramountcy as applied to Public Retirement Insurance
3. Mechanisms of Federal-Provincial Relations
4. The Capital Market and Financial Institutions
5. Future Work Programme
6. Other Business
 - (a) The amending formula

CONTINUING COMMITTEE OF OFFICIALS

FOURTEENTH MEETING

JANUARY 20-22, 1971

AGENDA

1. Paramountcy as applied to Public Retirement Insurance
2. Mechanisms of Intergovernmental Relations
3. Capital Market and Financial Institutions
4. Environmental Management
5. Amending Formula
6. Arrangements for the February Conference
7. Other Business

(iii) AGENDAS: COMMITTEE OF MINISTERS
ON FUNDAMENTAL RIGHTS

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

FIRST MEETING

MAY 28-29, 1969

AGENDA

1. Terms of reference, procedures and organization
2. Preliminary discussion on the principle of entrenchment
3. The implications of entrenching certain specific rights in the constitution
4. Other business

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

SECOND MEETING

NOVEMBER 3-4, 1969

AGENDA

1. Political Rights
2. Free and regular elections at maximum intervals
3. Further discussion on legal rights including such matters as habeas corpus, the right to retain and instruct counsel and to a fair hearing for the determination of rights and obligations
4. Due Process
5. Future programme of work
6. Progress Report to First Ministers

(iv) AGENDAS: COMMITTEE OF MINISTERS
ON THE JUDICIARY

COMMITTEE OF MINISTERS ON THE JUDICIARY

FIRST MEETING

MAY 29, 1969

AGENDA

1. Terms of reference, procedures and organization
2. Questions relating to the establishment of a constitutional court
3. The provision for a Supreme Court in the Constitution
4. The protection of the independence of the judiciary
5. Other business

COMMITTEE OF MINISTERS ON THE JUDICIARY

SECOND MEETING

NOVEMBER 4, 1969

AGENDA

1. Constitutional Court
2. Other questions relating to a Supreme Court
 - (a) size
 - (b) structure
 - (c) selection of judges
 - (d) civil law appeals
 - (e) precedent
3. Provincial Courts
4. Future programme of work
5. Progress Report to First Ministers

(v) AGENDAS: COMMITTEE OF MINISTERS ON
OFFICIAL LANGUAGES

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

FIRST MEETING

MAY 27, 1969

AGENDA

1. The examination of the terms of reference of the Ministerial Committee on Official Languages
2. The examination of the proposals of the various governments for the implementation of official language programmes
3. Preliminary consideration of a constitutional guarantee of language rights
4. Future work programme of the Ministerial Committee on Official Languages
5. Examination of the terms of reference of the Sub-Committee on Official Languages and its work programme
6. Report to the Constitutional Conference

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

SECOND MEETING

NOVEMBER 6, 1969

AGENDA

1. Consideration of federal and provincial proposals for financial and technical cooperation in implementing the recommendations contained in Book II of the Report of the Royal Commission on Bilingualism and Biculturalism
2. Consideration of the report of the Sub-Committee on the recommendations of the Royal Commission on Bilingualism and Biculturalism
3. Consideration of the Sub-Committee's request for guidance concerning its work priorities
4. Report to the Constitutional Conference
5. Future Work Programme

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

THIRD MEETING

MAY 25, 1970

AGENDA

1. Federal-Provincial programme of cooperation with respect to bilingualism in the field of education:
 - (a) Objectives
 - (b) Proposed formulae
 - (i) instruction costs
 - (ii) eligible levels of instruction
 - (iii) eligible supplementary administrative expenses
 - (c) Data collection and calculations
 - (d) Implementation of the programme and future consultations
 - (i) periodic evaluation of the programme
 - (ii) other aspects of the programme
 - (iii) federal-provincial arrangements
2. Other recommendations from Volume II of the Report of the Royal Commission on Bilingualism and Biculturalism concerning federal-provincial co-operation in education

3. Future programme of work of the Committee of Ministers
4. Future role and programme of work of the Sub-Committee
5. Report to the Constitutional Conference
6. Other business

(vi) AGENDA: COMMITTEE OF MINISTERS ON
THE SENATE

COMMITTEE OF MINISTERS ON THE SENATE

MEETING OF MAY 26, 1969

AGENDA

1. Terms of reference of the Committee
2. Procedures and organization
3. Preliminary examination of the considerations relating to the Senate set out in the conclusions of the Constitutional Conference, February 1969
4. Other business

(vii) AGENDAS: SUB-COMMITTEE ON
OFFICIAL LANGUAGES

SUB-COMMITTEE ON OFFICIAL LANGUAGES

FIRST MEETING

JULY 4-5, 1968

AGENDA

1. General arrangements
2. Terms of Reference
3. Review of Recommendations of B & B Commission and Plans of Governments on:
 - (a) Official Languages
 - (i) Federal Parliament, Courts, Administration (#1) (See Note 1 below)
 - (ii) Suggested provincial declarations (#2, 3, 4)
 - (b) Bilingual Districts (#5, 6, 7)
 - (c) Municipal Legislation (#8)
 - (d) Federal Capital Area (#9)
 - (e) Languages of Instruction (#10)
 - (f) Suggested Constitutional Amendments (#11, 12)
 - (g) Official Languages Acts (#13, 14)

4. Financial Aspects

(a) Principles of Cost Definition

(b) Possible forms of aid (financial and other) from federal government

5. Report for Continuing Committee

6. Other Business

Note 1 - #1 to #14 refer to the Recommendations of the Royal Commission on Bilingualism and Biculturalism

SUB-COMMITTEE ON OFFICIAL LANGUAGES

SECOND MEETING

OCTOBER 17-18, 1968

AGENDA

1. Review of propositions relating to Official Languages
2. Work programme and methods of the Sub-Committee
3. Further examination of the Report of the Royal Commission on Bilingualism and Biculturalism
4. The Official Languages Bill of the Federal Government
5. Further discussion on the costs of governmental measures pursuant to the recommendations of the Royal Commission on Bilingualism and Biculturalism and possible Federal assistance to the provinces
6. Report to Continuing Committee
7. Next meeting

SUB-COMMITTEE ON OFFICIAL LANGUAGES

THIRD MEETING

APRIL 18, 1969

AGENDA

1. Review of the work programme on the subject of Official Languages
2. Methods of implementing language programmes and policies of the Federal and Provincial Governments:
 - (a) questions related to intergovernmental assistance
 - (b) other aspects of implementation
3. Terms of reference of the Committee of Ministers on Official Languages
4. Other matters

SUB-COMMITTEE ON OFFICIAL LANGUAGES

FOURTH MEETING

OCTOBER 2-3, 1969

AGENDA

1. Review of recommendations of Volume II of the Report of the Royal Commission on Bilingualism and Biculturalism including technical and financial implications
2. The question of language rights
3. Preparations for the meeting of the Committee of Ministers and future work programme of the Sub-Committee
4. Other matters

SUB-COMMITTEE ON OFFICIAL LANGUAGES

FIFTH MEETING

APRIL 5-6, 1971

AGENDA

1. Bursaries and fellowships at the university level
2. Minority language education at the university level
3. Official minority language teacher training institutions
4. Language training centres and bursaries
5. Interprovincial Bureau of Language training centres
6. Language Research
7. Catch-up projects
8. Technical assistance in fields other than education
9. Report to the Ministerial Committee on Official Languages
10. Other business

(viii) AGENDAS: SUB-COMMITTEE ON
FUNDAMENTAL RIGHTS

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

FIRST MEETING

FEBRUARY 4, 1970

AGENDA

1. Business of the Meeting - Tasks of the Sub-Committee
2. Political Rights
3. Legal Rights
4. Due Process
5. Future Programme of Work and other business

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

SECOND MEETING

MARCH 25, 1970

AGENDA

1. Preliminary discussion of procedure -
Task 2 - legal rights, Task 3 - due process
2. Fundamental political rights
 - (a) Freedom of religion
 - (b) Freedom of expression
 - (c) Freedom of assembly and association
3. Future programme of work and Report

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

THIRD MEETING

JUNE 1-2, 1970

AGENDA

1. Introduction - Work programme for the meeting including consideration of the proposal re. the right to vote
2. Examination of draft report
3. Future programme of work
 - (a) Due process
 - (b) Legal rights
 - (c) Other matters

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

FOURTH MEETING - JUNE 29, 1970

FIFTH MEETING - SEPTEMBER 28, 1970

NOTE: No formal agendas were prepared for these meetings.
Please see Chapter 5 for a report of the discussions in each case.

(ix) AGENDA: CONFEDERATION OF
TOMORROW CONFERENCE

CONFEDERATION OF TOMORROW CONFERENCE

NOVEMBER 1967

AGENDAMONDAY, NOVEMBER 27

10:00 a.m. Address of welcome by the
 Hon. J. P. Robarts, Prime Minister
 of Ontario.

10:15 a.m. FIRST SESSION

to
12:30 p.m. Short statement by the leader of each
 delegation.

Theme: "The Confederation of Tomorrow"

Topic: What should the Confederation
 of Tomorrow Conference
 accomplish?

MONDAY, NOVEMBER 27

3:00 p.m.

SECOND SESSION

to

5:00 p.m.

Theme: "The Goals of Canadians"

Topics: 1. What are the common
concerns of all Canadians
in 1967?

Some illustrations of
these concerns might be: the
quality of life; linguistic
and cultural heritage; economic
growth and minimum national
standards; education; Canada's
position in the world.

2. What are the major
obstacles to the attainment
of these goals?

TUESDAY, NOVEMBER 28

10:00 a.m.
to
12:00 noon

THIRD SESSION

Theme: "The Role of the English
and French Languages in
Canada"

Topics: 1. What recognition is
now accorded the English
and French languages?
(a) federally
(b) provincially

2. What status should the
English and French languages
have?
(a) federally
(b) provincially

3. Should Section 133 of the
Constitution be enlarged to
ensure the official and equal
status of the English and
French languages across
Canada? Or should such a
guarantee be left to the
discretion of each province?

4. What is the relationship
between linguistic rights and
cultural, economic and fiscal
goals?

TUESDAY, NOVEMBER 28

2:00 p.m.
to
4:00 p.m.

FOURTH SESSION

Theme: "The Ways in Which the
Federal System Could be
Improved"

Topics: 1. What viable choices
does Canada have about
its form of federalism?

Among the possible
choices might be included:
the present scheme; a
greater flexibility in the
present scheme; a
greater centralization;
a greater decentralization;
a change in the number of
provinces; differing
arrangements or status for one
or more provinces.

2. What are the implica-
tions of each of these
options? What are the
advantages and disadvantages
of each option?

WEDNESDAY, NOVEMBER 29

10:00 a.m.
to
12:00 noon

FIFTH SESSION

Theme: "The Ways in Which the
Federal System Could be
Improved"

Topics: 1. In what areas might
change be considered necessary
and desirable?

For example, a Bill of Rights;
the Senate; the Supreme Court;
the Crown; other areas of the
Constitution.

2. Assuming change is both
necessary and desirable, how
should it take place?

For example, by adjustment to
practice only? by formal
amendments to the Constitution?
by a constitutional convention
called to draft a new
constitution?

WEDNESDAY, NOVEMBER 29

2:00 p.m.

to

4:00 p.m.

SIXTH SESSION

Theme: "The Machinery and Structure
of Federal-Provincial and
Interprovincial Relationships
in Canada"

Topics: 1. What should be the aim of
the machinery and structure
of these relationships?

2. Are the existing machinery
and structure of these
relationships adequate? If
not, in what manner should
reforms be made?

3. What new forms of machinery
and structure might be
envisaged?

THURSDAY, NOVEMBER 30

10:00 a.m.
to
12:00 noon

SEVENTH SESSION

Short statement by the leader
of each delegation.

Theme: "The Second Century of
Confederation"

Topic: Priorities of future
conferences.

APPENDIX B

CONCLUSIONS

(1) CONCLUSIONS: CONSTITUTIONAL CONFERENCE

CONSTITUTIONAL CONFERENCE

FIRST MEETING

FEBRUARY 1968

CONSENSUS ON LANGUAGE RIGHTS

1. Recognition by this Conference that, as proposed by the Royal Commission on Bilingualism and Biculturalism and as a matter of equity, French-speaking Canadians outside of Quebec should have the same rights as English-speaking Canadians in Quebec.
2. Recognition, as the Royal Commission on Bilingualism and Biculturalism has recommended, of the desirability of proceeding by governmental action as speedily as possible, in ways most appropriate in each province and without diminishing existing rights, recognized by law or usage.
3. Establishment of a special committee to examine the Report of the Royal Commission on Bilingualism and Biculturalism and the views expressed at this Conference on the Report, and on other matters relating to language rights and their effective provision in practice, and to consult on methods of implementation, including the nature of possible federal assistance, and on the form and the method of constitutional amendment.

PROPOSALS ADOPTED BY THE CONFERENCE

THAT a continuing Constitutional Conference be set up, composed of the Prime Ministers and Premiers or their delegates, to supervise the process of constitutional review;

THAT a Continuing Committee of officials be set up to assist the Constitutional Conference in its task;

THAT a secretariat be formed by the federal government, after consultation with the provinces, to serve both the Constitutional Conference and the Continuing Committee of officials;

THAT the Continuing Committee of officials be allowed to set up sub-committees on specific questions; with the approbation of the Prime Ministers;

THAT, without limiting the above terms of reference, and taking into account the agreements as to principle and action reached at this Conference, the following questions be examined by the Constitutional Conference and the Continuing Committee of officials:

- a) official languages;
- b) fundamental rights;
- c) distribution of powers;
- d) reform of institutions linked with federalism, including the Senate and the Supreme Court of Canada;
- e) regional disparities;
- f) amending procedure and provisional arrangements;
- g) mechanisms of federal-provincial relations.

CONSTITUTIONAL CONFERENCE

SECOND MEETING

FEBRUARY 1969

CONCLUSIONS OF THE MEETING

1. General objectives of the Constitutional Conference
(Agenda item 2(a))

The Constitutional Conference reaffirms its intent to complete a comprehensive review of the Constitution of Canada, to assess its adequacy for present and future requirements, and to determine the extent to which constitutional change is desirable either through amendment of the existing Constitution or through promulgation of an entirely new Constitution.

2. Procedure for constitutional review
(Agenda item 2(c))

- (a) The Constitutional Conference expresses its intent that the review should proceed at an accelerated pace, now that the basic organizational and background work has been carried out. In this connection, the First Ministers will endeavour to hold more frequent sessions of the Constitutional Conference and, in addition, to have informal working sessions with the Continuing Committee of Officials, to provide more continuous direction to the process of constitutional review.
- (b) In order to maintain effective co-ordination of the constitutional review, the Conference agrees that:
- (i) all special committees of ministers set up by the Constitutional Conference should report to the Constitutional Conference;

- (ii) the Continuing Committee of Officials should assist other ministerial committees, as required;
- (iii) all special committees of officials should be constituted as sub-committees of the Continuing Committee of Officials;
- (iv) the Continuing Committee of Officials is authorized to establish such sub-committees, working groups or task forces as seem to be required for its purpose;
- (v) the Secretariat of the Conference should also serve all such ministerial committees and committees of officials.

3. Official Languages
(Agenda item 4(a))

The Constitutional Conference recognizes that important steps have been taken by governments in the past year to encourage a fuller role for the French language throughout Canada, and it affirms that study of linguistic matters should be continued. In particular, the First Ministers agree that:

- (a) The recommendations of the Royal Commission on Bilingualism and Biculturalism, together with reports on linguistic matters from the Continuing Committee of Officials and the Sub-Committee on Official Languages, should be referred to a Committee of Ministers which should consider both the constitutional aspects of linguistic matters and the methods of implementation of language policies, including the nature of possible federal assistance for this purpose.
- (b) The Royal Commission's reports, together with other aspects of the subject of official languages, should receive such further consideration by the Continuing Committee of Officials and its Sub-Committee on Official Languages as may be required to assist the Committee of Ministers in its task.

4. Fundamental Rights
(Agenda item 4(b))

The Constitutional Conference noting the various views and the general interest that have been expressed with regard to guarantees of human rights, including those views brought before the Continuing Committee of Officials, agrees that a Committee of Ministers should be established to study all matters relating to fundamental rights, including the question of entrenchment of such rights in a constitutional charter.

5. Distribution of Powers
(Agenda item 4(c))

- (a) The Constitutional Conference recognizes as a matter of priority the study of the distribution of powers, in particular the taxing and spending powers, and directs the Continuing Committee of Officials to give its immediate attention to this aspect of the Constitution.
- (b) The Constitutional Conference, recognizing the urgency of the matter, agrees that the Tax Structure Committee should be convened for the purpose of examining, and reporting at the earliest opportunity to First Ministers, on:
 - (i) the occupancy of available tax fields by each of the provincial governments and the Government of Canada, and
 - (ii) federal-provincial shared-cost programme arrangements.

To this end the Tax Structure Committee would consider the aggregate of government expenditures and their rate of growth; the tax sources available for financing these expenditures and the potential of the total tax system; the level of borrowing by governments and its effect upon the Canadian economy; and the balance of fiscal responsibilities and resources within each of the provinces and the Government of Canada.

6. Regional Disparities
(Agenda item 4(e))

The Constitutional Conference agrees that:

- (a) the promotion of the full development of all parts of Canada is an essential objective of Confederation;
- (b) a Committee of Ministers should, taking into account the views and proposals of the various governments, consider the administrative, financial and consultative arrangements for policies and programmes required immediately to reduce regional disparities;
- (c) the Continuing Committee of Officials should give special attention to the constitutional aspects of regional disparities, with a view to reporting to a Committee of Ministers as soon as possible.

7. Reform of institutions linked with federalism -
The Senate
(Agenda item 4(d))

The Constitutional Conference while recognizing that the reform of the Senate must be considered in the context of other matters related to the basic principles, structure and powers of Government in Canada agree that a Committee of Ministers should study possible constitutional provisions relating to the reform of the Senate and should take account in particular of the following considerations:

- (a) The Senate could represent in a more direct and effective manner than at present, the interests of the provinces and regions of Canada;
- (b) One of the ways in which this could be achieved is through appropriate changes in the method of selecting Senators, and another could be by altering the tenure of office of Senators;
- (c) It might be appropriate for the Senate to be provided with certain special powers in order to make it a more effective instrument of federalism, while at the same time adjusting its role in relation to legislation generally;

- (d) The distribution of membership should reflect in an equitable manner the provinces and regions of Canada;
- (e) The Government of Canada should continue to be responsible only to the House of Commons.

8. Reform of institutions linked with federalism -
The Judiciary
 (Agenda item 4(d))

The Constitutional Conference agrees that:

- (a) The Constitution should provide for the independence of the Judiciary;
- (b) A Committee of Ministers should, taking into account the views and proposals of the various governments, consider further provisions concerning the Supreme Court and the Judiciary.

9. Reform of institutions linked with federalism -
The National Capital
 (Agenda item 4(d))

The Constitutional Conference, subject to any comments that may be submitted, agrees that:

- (a) The cities of Ottawa and Hull and their surrounding areas shall be the Canadian Capital area;
- (b) No changes be made to provincial boundaries or to the constitutional responsibilities of the governments concerned;
- (c) The boundaries of the Canadian Capital area are to be established by agreement of the governments concerned;
- (d) In line with the aforementioned objectives, steps must be taken so that the two official languages and the cultural values common to all Canadians are recognized by all governments concerned in these two cities and in the Capital Region in general, so that all Canadians may have a feeling of pride and participation in, and attachment to their Capital;

- (e) That the study committee on the Canadian Capital continue its work, giving particular importance to the following:
 - (i) the definition of adjacent areas which would eventually constitute, along with the cities of Ottawa and Hull, and their surrounding areas, the Canadian Capital Region.
 - (ii) the study of the administration and the financing of a tripartite organization.

CONSTITUTIONAL CONFERENCE

FIRST WORKING SESSION

JUNE 11-12, 1969

CONCLUSIONS OF THE MEETING

The Prime Ministers and Premiers held their First Working Session in Ottawa on June 11 and 12, 1969.

The agenda of the meeting was as follows:

1. Distribution of Powers in the Constitution:
 - a) The Taxing Powers
 - b) The Spending Powers
2. Constitutional Aspects of Regional Disparities
3. Progress Reports from Committees of Ministers
4. Programme of Work for the Constitutional Review
5. Other Business

Item 1 - General

In the consideration of this item, all governments noted that the present discussions about the taxing and spending powers were subject to a satisfactory division of powers being developed. The Government of Canada and several provinces were concerned that any agreement on the taxing and spending powers was subject to a distribution of legislative powers which would ensure a strong central government. Some provinces made the point that federalism also meant strong provincial governments.

Agenda Item 1 a) -

With one exception, the First Ministers agreed that Parliament and the provincial legislatures should generally have access to all tax fields, the power of the Parliament of Canada applying across the country and the power of each provincial legislature applying within that province. In applying this principle, the following objectives were accepted:

- (i) The "within the province" limitation of provincial taxing powers should generally be applied with respect both to direct and indirect taxes, so as to protect the taxpayer against the taxation of his income, property or purchases by more than one province.
- (ii) The taxing powers of both Parliament and the provincial legislatures should be limited so as to avoid the erection of "tax barriers" to interprovincial trade, and the power to impose customs duties should continue to be confined to Parliament alone.
- (iii) Considering that both Parliament and the provincial legislatures would have access in general to the same sources of tax revenue, there should be more regular and adequate federal-provincial consultations.

It was recognized that the principle of general access to all tax fields would not enable all provincial governments equally to discharge their constitutional responsibilities, and therefore Parliament should have the explicit power to make equalization grants to provincial governments. One province advocated that, instead of equalization grants to governments, there be established a basic income for all Canadians.

While some differences of views were expressed, the First Ministers agreed that the Continuing Committee of federal and provincial officials be instructed to consider further how these principles, if formally accepted, might be applied in a revised constitution and, in particular, to consider the alternative method of their application to the taxation of estates, transactions and real property. Certain provinces expressed the view that death duties and real property taxes should be excepted from the principle of access.

The Conference recognized that the discussions on the use by Parliament and the legislatures of their taxing powers should proceed concurrently with the constitutional discussions, and that such discussions would be of continuing importance in relation to the discharge by governments of their constitutional responsibilities.

Agenda Item 1 b) -

The second major item of discussion concerned the exercise of the spending power of the Parliament of Canada. Most delegations agreed that the present power of Parliament to make payments to individuals or to institutions should not be subjected to any constitutional limitation; one province, however, reserved its position until the question of the distribution of powers had been dealt with, while some other provinces expressed the view that this federal power should in practice be exercised in consultation with the provinces. It was also noted that some differentiation of institutions might be required before this principle could be finally accepted.

There was general agreement that there should be no constitutional restriction on the power of the Parliament of Canada to make unconditional grants to provincial governments; one province, however, expressed the view that the establishment of a negative income tax plan, administered by the Government of Canada, would make such payments unnecessary.

It was generally agreed that the Parliament of Canada should continue to have the power to make conditional grants to provincial governments, provided there is a satisfactory formula for determining a national consensus in favour of particular programmes, and provided there is a satisfactory formula for compensation in non-participating provinces.

With respect to the formula for determining the consensus, there was agreement that the Parliament of Canada and the provincial legislatures would be the appropriate bodies to determine whether a consensus exists, and there was general agreement that the formula should reflect the regional character of the country. However, one province stated that while it agreed with the principle of establishing a consensus, it considered that the formula for amending the Constitution might well provide the basis for reaching consensus. It was further agreed that the Continuing Committee of Officials should look again at alternative formulae.

There was general agreement that there should be no fiscal penalty upon the people of the non-participating provinces and that the ways of achieving this would be discussed at future meetings.

Agenda Item 2 -

The First Ministers agreed that the objective of reducing disparities across the country should be written into the preamble of a revised constitution as a basic goal of the Canadian people. Some provinces argued further that the Constitution should impose on the Federal Government a specific obligation to alleviate disparities. First Ministers agreed that at future discussions on the division of powers, it will be important to ensure that the federal and the provincial governments have appropriate powers to work toward this objective.

Agenda Item 3 -

The Working Session was advised of the progress which had been made by Committees of Ministers on the following matters:

Official Languages
Fundamental Rights
The Judiciary
The Senate

The First Ministers took note of the progress to date and agreed that all the Committees should endeavour to meet again and report further to the Constitutional Conference before its next meeting.

Agenda Item 4 -

The Prime Ministers and Premiers agreed to meet again before the end of the year.

CONSTITUTIONAL CONFERENCE

THIRD MEETING

DECEMBER 1969

CONCLUSIONS OF THE MEETING1. Progress and Procedure in the Constitutional Review

The Prime Ministers and Premiers noted that progress had been achieved in the course of 1969 in the "comprehensive review of the Constitution of Canada" that had been agreed upon at the Second Meeting. The procedure adopted in February 1969 provided for working by means of "more frequent sessions of the Constitutional Conference", interspersed with "informal working sessions", together with the reference of particular problems to special Committees of Ministers, the Continuing Committee of Officials and Sub-Committees of Officials. The Conference affirmed its intention to continue this procedure in 1970 and agreed, subject to further discussion at the Federal-Provincial Conference of Prime Ministers and Premiers to be held in February 1970, that a Working Session would be planned for June 1970, and the Fourth Session of the Conference for the autumn.

2. Income Security and Social Services
(Agenda Item 1(a))

The Constitutional Conference considered the distribution of powers in relation to the fields of income security and social services to try to determine what would be most appropriate to meet the needs of Canadians in the future.

The Conference recognized that there were many complex considerations arising out of the various proposals for distribution of powers related to income security and social services and that the views of governments were necessarily tentative until these considerations could be fully assessed. While there was not full agreement on the definitions, the discussion was carried out under the following categories suggested in the federal proposal, namely,

- (i) Income Support;
- (ii) Income Insurance;
- (iii) Social Services.

(i) Income Support

Quebec maintained the position that the provinces should have exclusive jurisdiction in the field of income support. Other First Ministers accepted the principle that Parliament and the provincial legislatures have and should continue to have powers to make general income support payments to persons. Some provinces expressed the view generally that the basic income support payments could logically be made by the Federal Government.

(ii) Income Insurance

The Conference considered the Federal proposal that Parliament and provincial legislatures ought to have concurrent powers in respect of income insurance matters, with the exceptions that:

- unemployment insurance should continue to be a matter of exclusive federal jurisdiction;
- workmen's compensation should continue to be a matter of exclusive provincial jurisdiction;
- retirement insurance should continue to be a matter of concurrent jurisdiction, but with federal powers becoming paramount.

Doubt was expressed by some that federal paramountcy in the matter of retirement insurance was required or desirable. It was apparent that there were different views concerning the meaning of paramountcy and the implications of providing for federal paramountcy in the case of retirement insurance. It was agreed that the Continuing Committee of Officials should undertake a detailed examination of the application of the concept of paramountcy, federal or provincial, in the field of public retirement insurance.

(iii) Social Services

It was generally agreed that provincial legislatures ought to continue to have exclusive jurisdiction over social services. Several provinces proposed that concurrent jurisdiction in this field should be considered. It was recognized that the federal government could, for the purpose of achieving national objectives, continue to use its spending power, subject to conditions to be defined, to make conditional grants to provincial governments in respect of those services.

There was a question whether federal manpower programmes had components which were essentially social services. The view was put forward notably by the federal government that manpower services were an essential part of the general economic powers and should be considered further when the subject of economic powers came up. In addition, it was agreed, however, that the appropriate federal and provincial ministers should examine the question whether the needs of the country could be more effectively met if the social aspects of manpower services were carried out by the provinces.

3. The Spending Power: Federal Grants to Provincial Governments
(Agenda Item 1(b))

The Conference considered two questions raised in the federal proposals: the determination as to when there was a sufficient consensus favouring the introduction of new shared-cost programmes in fields of exclusive provincial jurisdiction, and the method which might be adopted for avoiding a fiscal penalty on the people of the provinces which decided not to participate in the programmes.

(i) Consensus - Most First Ministers agreed that the Constitution ought to require the determination of a consensus, on a regional basis, before the Parliament of Canada could enact new and general shared-cost programmes in areas of provincial jurisdiction. The principal suggestions were that the legislatures of three out of four, or three out of five regions of Canada having a majority of the population, ought to be required to agree to any proposal from Parliament for a new federal-provincial programme before it could become effective. (Where a region contained three or four provinces the approval of two legislatures would be required.)

The governments of Manitoba and New Brunswick were of the view that no formal requirement should exist as to how many provinces must agree before Parliament could undertake a new general shared-cost programme. Rather the Constitution should impose an obligation upon the federal government to consult all provinces before initiating such programmes.

(ii) Compensation in Non-Participating Provinces -

It was recalled that the Constitutional Conference had agreed in June that there should be no fiscal penalty upon the people of the provinces whose provincial legislatures had decided against participating in a particular federal-provincial programme.

Three views were expressed as to how a fiscal penalty could be avoided. The first was that the people in such provinces themselves ought to be compensated in an amount which in the aggregate would equal the per capita federal payments to participating provinces. The second view was that the governments of the non-participating provinces ought to receive unconditional grants equal to the conditional grants they would have received had they agreed to participate in the federal-provincial programme. The third view was that taxes imposed by the federal government for the purpose of financing a particular shared-cost programme should not be levied in a non-participating province. It was agreed to defer discussion of this question until further aspects of the distribution of powers had been considered.

4. Taxation
(Agenda Item 1(c))

The Constitutional Conference agreed that the Continuing Committee of Officials and its Sub-Committees should continue with the work in progress on the alternative ways of handling sales taxes and death duties in a new or revised Constitution.

5. Regional Disparities
(Agenda Item 2)

The Conference reiterated the earlier agreement that the objective of reducing disparities across the country should be written into the preamble of a revised Constitution as a basic goal of the Canadian people.

It was recognized that both levels of government had responsibility for the achievement of this goal and that each should have appropriate powers for this purpose. Eight provinces and the federal government agreed that the federal government should have the power to alleviate regional disparities in relation to the income of individuals, inequality of economic development and standards of public services. British Columbia and Alberta advanced the view that, instead, a guaranteed annual income would remove disparities between individuals wherever they might be in Canada and therefore the effect would be to lessen regional disparities.

There was some support for the inclusion of a substantive provision in the body of the Constitution which would set forth the obligation, not subject to judicial review, of the federal and provincial governments related to regional disparities.

Because of the significance of the legal questions raised in the discussion, the Conference agreed that the Continuing Committee of Officials should give further study to the implications of placing specific clauses in the Constitution.

6. Reports from Committees of Ministers
(Agenda Item 3)

- (a) The Constitutional Conference received the Progress Report of the Committee of Ministers on Fundamental Rights, and agreed that the Committee should be asked to proceed as quickly as possible with the programme of work proposed in the Report.
- (b) The Constitutional Conference received the Progress Report of the Committee of Ministers on the Judiciary, and requested the Committee to carry out the work programme it had proposed in its Report.
- (c) The Constitutional Conference received the Progress Report of the Committee of Ministers on Official Languages. It was agreed that bilateral discussions should proceed as quickly as possible between the federal government and the provinces concerning the federal proposal for financial and technical co-operation in implementing the recommendations of the Royal Commission on Bilingualism and Biculturalism. It was agreed, also, that the Sub-Committee on Official Languages and, if it were desired, the Committee of Ministers, should meet again after the bilateral consultations had been completed.

7. Future Programme of Work
(Agenda Item 4)

First Ministers agreed to meet in camera in Ottawa on the 16th of February to discuss non-constitutional matters, essentially the economic situation, pollution and the report of the Tax Structure Committee.

CONSTITUTIONAL CONFERENCE

SECOND WORKING SESSION

SEPTEMBER 14-15, 1970

CONCLUSIONS OF THE MEETING

1. The Constitutional Conference met in Ottawa on September 14th and 15th, 1970. In keeping with the conclusion at the February 1969 meeting of the Conference that there was a need for occasional informal working sessions, this meeting was held in private. There have so far been three public meetings of the Constitutional Conference - in February 1968, February 1969 and December 1969 - and one other private working session in June 1969.
2. The agenda for the meeting was as follows:
 - (1) The Constitutional Review Process.
 - (2) Environmental Management.
 - (3) Capital Market and Financial Institutions.
 - (4) Report from the Committee of Ministers on Official Languages.
 - (5) Reports from the Continuing Committee of Officials:
 - (a) Taxing Power - Sales Taxes.
 - (b) Taxing Power - Death Duties.
 - (c) Regional Disparities - Constitutional Obligation.
 - (d) Paramountcy as applied to Public Retirement Insurance.
 - (6) Other Business.

3. The Constitutional Review Process

The Conference proceeded to a detailed examination of the constitutional review process in the light of the experience and progress to date. First Ministers emphasized the importance of the extensive work already done, which makes for a better understanding of the varied implications of the complex issues raised; also it enables each First Minister to have a full appreciation of the views, interests and concerns of the others. An indication of the progress made to date on individual subjects thus far considered in the constitutional review is set out in the appendix to this statement.

4. The Conference concluded that it was important for the federal and provincial governments to continue and complete the task which they had undertaken in 1968 and to determine what changes are required to provide constitutional arrangements in Canada that are adequate for current and future needs. It was agreed, also, that this task should be completed as quickly as was practicable. It was nevertheless recognized that it would be unrealistic to expect an early completion of the task, since the thoroughness of the review should not be sacrificed and, of course, current problems must continue to be dealt with in the normal way while the constitutional review is carried on.
5. The First Ministers considered the nature of the review, and it was agreed that it must continue as basically a political process, involving consultations between governments. At the same time, an essential part of the review was seen to be the preparatory and background work carried out by the existing committees of ministers, officials and consultants and by the Secretariat. It was recognized also that it was important to keep the public involved and fully informed of progress.
6. The Conference agreed that the examination of the question of amending procedures should now be given attention. A number of First Ministers thought that certain urgent amendments might be required before

the full review could be completed and that it would be important to have an appropriate method of making such amendments. It was the view of some that the ways of amending the constitution could best be examined in the light of discussions concerning specific provisions.

7. Several First Ministers stressed the importance of developing effective mechanisms for intergovernmental relations in meeting the problems faced by all governments today. It was agreed that this subject should be studied at an early date and be placed on the agenda of the next meeting of the Conference.

8. The First Ministers agreed that to expedite the review process they would plan on further full meetings of the Constitutional Conference, with ample opportunity between meetings for consultations between individual governments. In particular it was agreed that (except for Saskatchewan which favoured one meeting a year):
 - (a) First Ministers should plan on two meetings of the Conference a year, on the understanding that this would not prevent them from giving the necessary attention to pressing current issues which might arise. It was agreed that the nature of any particular meeting would be decided according to the circumstances, since both open and closed meetings were recognized to have value;

 - (b) in addition to the meetings of the Conference and committees, consultations between individual governments would be used, as appropriate, to examine specific constitutional questions;

 - (c) the Continuing Committee of Officials would be given more specific direction by the Conference, including, in particular, a request to carry out detailed investigation of the ways of amending the Constitution, to advance the examination of the subject of the intergovernmental consultative process and to continue with the study of the distribution of powers.

Environmental Management

9. The problem of pollution was identified as one of the most pressing and serious issues facing the people and governments of Canada today and one that will assume increasing dimensions in the future. The Constitutional Conference considered the subject of environmental management.
10. The First Ministers explored the many dimensions of this subject, and concluded that effective management of the environment in future would involve all jurisdictions. In particular, it was suggested by some governments that the federal government would have a role in respect of international matters, interprovincial matters, and in supporting research into standards and technology. They agreed that governments should continue to study the constitutional aspects of this subject with a view to presenting proposals for possible constitutional changes in jurisdiction which would be discussed at the next meeting of the Conference.
11. The First Ministers made it clear that during these constitutional discussions of the problems of environmental management, the federal and provincial governments would continue to act cooperatively and to implement coordinated programmes of environmental management under the present constitutional arrangements.

The Capital Market and Financial Institutions

12. The First Ministers had a preliminary discussion concerning the subject of the Capital Market and Financial Institutions and examined constitutional aspects of currency and banking, credit control, creation and regulation of financial institutions, trading and issuing of securities.
13. It was generally agreed that the chartered banks continue as a responsibility of the Parliament of Canada. British Columbia suggested and Alberta agreed that there be constitutional provision for the central

bank and a proposed intergovernmental fiscal and monetary council with some provincial responsibility for appointment of members to the Board of Directors of the central bank and members of the council. Quebec also thought that consideration should be given to decentralization of the operation of the central bank.

14. A number of provinces expressed the view that present banking institutions were not sensitive enough to the needs of various regions of Canada, and it was agreed that there should be discussions of ways, under the present Constitution, of making these institutions more responsive to regional needs.
15. It was generally agreed that the Constitution should provide for concurrent federal and provincial jurisdiction over credit. It was recognized that there should be more detailed study of any paramountcy, federal or provincial, which might be desirable in this field.
16. The Conference also considered the question of constitutional authority over financial institutions, other than banks, and various possibilities for constitutional change were put forward for study. Some provinces felt that intergovernmental arrangements could be relied upon to ensure any necessary uniformity in the regulation of institutions. It was agreed that the implications of alternatives for constitutional change should be fully explored.
17. The Conference also examined possibilities for the allocation of powers in relation to the securities market. Some First Ministers were of the view that a greater federal presence in this field was called for. Some provinces expressed the view that there was no need for a federal presence in a field that was being satisfactorily administered at the provincial level. A suggestion was made that a joint federal-provincial agency could be established to ensure uniformity in the regulation of securities. It was agreed, however, that the implications of constitutional and other alternatives should be examined in detail.
18. The Ministers of Finance and other Ministers, as appropriate, as well as the Continuing Committee of Officials, were asked to continue to study in detail

the implications of various constitutional approaches to the general field of the capital market and financial institutions, in preparation for a fuller discussion by the Constitutional Conference at its next meeting.

Official Languages

19. The Constitutional Conference received a Progress Report from the Committee of Ministers on Official Languages.
20. The Ministers reported on their consultations concerning a federal-provincial programme of cooperation with respect to bilingualism in the field of education. They also reported that the Committee had devised a formula for federal financial assistance which would encourage progress in this field without infringing upon provincial jurisdiction in matters of education, and they had recommended to governments that this formula should be adopted for a trial period of 18 months. The Conference noted that this recommendation was accepted by all governments.
21. It was agreed further that federal-provincial consultations on this programme should be continued and be concerned, in particular, with the nature and financing of possible "catch-up" projects within certain provinces.
22. The Constitutional Conference recorded its view that, taking into account the formula which had been worked out by the Committee of Ministers and the various steps which had been taken within governments in the past two years, there had been substantial progress made toward accomplishing the objectives expressed in the original "Consensus on Language Rights" which had been agreed upon by the Constitutional Conference at its initial meeting in February 1968.

23. The Conference complimented the Committee of Ministers on their work and agreed that they should continue to meet to review progress in the implementation of the new programme and to consider other recommendations of the Royal Commission on Bilingualism and Biculturalism. In particular, the Committee of Ministers was asked to turn its attention to the constitutional aspects of language rights.

The Taxing Powers

24. The Constitutional Conference received reports from the Continuing Committee of Officials and its technical sub-committees concerning sales taxes and death duties. These reports had been prepared in the light of the principles which were identified by the Conference during its discussion of the taxing powers in June 1969, and in accordance with the direction from the Conference that officials should consider the alternative methods for the application of these principles to the taxation of transactions and estates. It was agreed that these reports would be taken into account at an appropriate later stage in the review.

Regional Disparities

25. The Constitutional Conference has completed the main phase of its examination of the constitutional aspects of one of its major subject areas - regional disparities. This subject was one of the original list of seven main areas of enquiry which were designated by the First Ministers at the founding meeting of the Constitutional Conference in February 1968. The following conclusions were placed on record and are ready to be dealt with when the drafting stages of the review are reached.
26. The Constitutional Conference unanimously agreed that it is one of the foremost purposes of the country to ensure that disparities in the well-being and in the economic, social and cultural opportunity of individuals in all regions throughout Canada should be alleviated.

27. To this end, the First Ministers reaffirmed their agreement that the objective of reducing such disparities across the country should be written into the preamble of a revised Constitution as a basic goal of the Canadian people.
28. The Conference agreed, further, British Columbia dissenting, that the Constitution should contain, in addition, a statement of the moral obligation of both the federal and provincial governments to take appropriate action for the purpose of realizing this objective. British Columbia reiterated the view it had recorded in December 1969 that the best means of achieving the goal of alleviating regional disparities would be by alleviating the disparities among individuals.
29. The Conference agreed, also, that in its continuing study of the distribution of powers, the requirements of this major objective would be borne in mind, so that both the federal and the provincial governments would have the constitutional powers they need to meet their responsibilities in alleviating disparities.

Paramountcy as applied to Public Retirement Insurance

30. The Conference received a progress report from the Continuing Committee of Officials on the matter of paramountcy as applied to public retirement insurance. The First Ministers agreed that the goal to be achieved was that portability of the benefits of public retirement insurance plans would be ensured. The Conference therefore agreed that the Continuing Committee should continue to study the question of paramountcy, along with other alternatives for ensuring portability, with a view to submitting a final report at the next meeting of the Constitutional Conference.

Conclusion

31. The Constitutional Conference agreed that it would meet again in a working session next February. It was agreed also, that the Conference would plan to meet again in June of 1971, at which time they would accept the invitation of the Prime Minister of British Columbia to meet in Victoria.

Appendix to Statement of Conclusions

CONSTITUTIONAL REVIEWLIST OF SUBJECTS APPROVED IN FEBRUARY 1968

- (a) Official Languages
- (b) Fundamental Rights
- (c) Distribution of Powers
- (d) Reform of Institutions Linked with Federalism,
including the Senate and the Supreme Court of Canada
- (e) Regional Disparities
- (f) Amending Procedure and Provisional Arrangements
- (g) Mechanisms of Federal-Provincial Relations

DETAILED LISTING OF SUBJECTS WITHINDICATION OF WORK DONE TO DATESubject - Stage Reached(a) Official Languages

Discussions at all levels; referred to Ministerial Committee and Sub-Committee, considerable progress made on non-constitutional aspects.

(b) Fundamental Rights

Discussions at all levels; referred to Ministerial Committee and Sub-Committee, considerable progress made on political rights.

(c) Distribution of Powers

(i) Spending Power

Discussions by both First Ministers and the Continuing Committee of Officials; work at an advanced stage, to be reviewed later.

(ii) Taxing Power

Discussions by both First Ministers and the Continuing Committee of Officials referred to technical sub-committees; technical work near completion, subject to review later.

(iii) Income Security and Social Services

Major discussions by both First Ministers and the Continuing Committee of Officials

(iv) External Affairs

Some papers submitted, preliminary discussions early in the review.

(v) Economic Growth

General discussion by the Continuing Committee of Officials; future work to focus on individual components of the subject.

(vi) Capital Markets and Financial Institutions

Recent preliminary discussion by the Continuing Committee of Officials.

(vii) Environmental Management

Preliminary discussions by the Continuing Committee of Officials.

(viii) Additional subjects

There are a large number of additional subjects falling under the distribution of powers which have not to date been examined in any detail.

(d) Reform of Institutions Linked with Federalism

(i) The Judiciary

Referred to a Ministerial Committee; work generally at a preliminary stage, with progress on some aspects.

(ii) The Senate

Referred to a Ministerial Committee; work at preliminary stage.

(e) Regional Disparities

Extensive discussions by First Ministers and the Continuing Committee of Officials; may be considered to have reached an advanced stage.

(f) Amendment Procedure

Examination not yet started.

(g) Mechanisms of Federal-Provincial Relations

Preliminary discussion by the Continuing Committee of Officials.

(h) Subject Areas not Specifically Listed in
February 1968

(i) Objectives of Confederation

Preliminary examination

(ii) General Principles to be Reflected in the
Constitution

Preliminary examination

(iii) Constitution of the Central Government

- Head of State) Preliminary
- Executive) discussion by the
- Parliament) Continuing Committee
- House of) of Officials of
- Commons) related propositions.
- Senate) (treated under
-) institutions of
-) federalism)

(iv) Constitutions of the Provincial Governments

Preliminary discussion by the Continuing
Committee of Officials of related
propositions.

CONSTITUTIONAL CONFERENCE

THIRD WORKING SESSION

FEBRUARY 8-9, 1971

CONCLUSIONS OF THE MEETINGPART IGeneral

1. In accordance with the conclusions of their working session last September, the First Ministers gave priority to the questions of an amending formula and an early patriation of the Canadian Constitution. The Conference agreed that the Government of Canada and the provinces should proceed as quickly as possible to patriate the Constitution, with an appropriate amending formula applicable entirely within Canada, and with such other changes as can be agreed upon quickly. This approach would permit a substantial degree of progress to be made quickly, while work on other aspects of constitutional revision continues. The First Ministers considered that such action might incorporate the elements set forth in the following paragraphs. However, the First Ministers reserved their right to further analyze all the juridical and other implications.

Patriation of the Constitution

2. The Constitutional Conference agreed on a procedure to be undertaken in Canada at a very early date in order to bring home the Constitution and to transfer to the people of Canada, through their elected representatives, the exclusive power to amend and to enact constitutional provisions affecting Canada. This procedure would involve:

- a) Agreement among the governments as to changes and procedure.
- b) Approval of a resolution in the usual way, by legislatures plus the two Houses of Parliament, authorizing the issuance of a proclamation by the Governor General to contain the amendment formula and whatever changes are agreed upon.
- c) Recommendation that the British Parliament legislate to:
 - i) recognize the legal validity of the Canadian proclamation and its provisions;
 - ii) provide that no future British law should have application to Canada; and
 - iii) make any consequential repeal or amendment of British statutes affecting the Canadian Constitution.
- d) Issuance of the proclamation by the Governor General on a date to coincide with the effective date of the British law.

The Amending Formula

- 3. The Constitutional Conference has considered the nature of the formula which should be adopted to permit the Canadian Constitution to be amended wholly within Canada. The First Ministers agreed that the following formula was a feasible approach.

I. General Procedure

All constitutional amendments in future, except those covered in II and III, would require a resolution of consent at the federal level plus consent of the legislatures of a majority of the provinces of Canada including:

- a) the legislature of any province now containing at least 25% of the population of Canada, and of any other province that hereafter contains 25% of the population of Canada; and
- b) the legislatures of at least two provinces west of Ontario providing that the consenting provinces comprise 50% of the population of the provinces west of Ontario and the legislatures of at least two provinces east of Quebec.

II. Federal and Provincial Constitutions

Sections 91(1) and 92(1) would be repealed and replaced by a section giving the Parliament of Canada and the legislatures of the provinces power to amend their respective Constitutions except with regard to the following matters when the general procedure set out in I would apply:

- a) the functions of the Queen, Governor General and Lieutenant Governors;
- b) need for annual sessions;
- c) maximum period between elections;

(The above three would apply to the legislatures as well as to Parliament; the following would apply to Parliament only.)

- d) principle of proportionate and minimum representation of members of Parliament from the provinces in the House of Commons;
- e) the number and residence qualification of Senators representing each province, and the powers of the Senate.

III. Amendments of Concern to Canada plus One or More but not All Provinces

Such changes would require a resolution of consent at the federal level plus the consent of the legislatures of the provinces concerned.

Fundamental Rights

- 4. It was agreed to entrench in the Constitution the following basic political rights:
 - a) universal suffrage and free democratic elections at least every five years;
 - b) freedom of thought, conscience and religion;
 - c) freedom of opinion and expression; and
 - d) freedom of peaceful assembly and association.

The exercise of these freedoms may be subject only to such limitations as are prescribed by law and as are reasonably justifiable in a democratic society in the interests of national security, public safety, health or morals or the fundamental rights and freedoms of others.

Language Rights

5. It was agreed that English and French should be declared the official languages of Canada, with the following provisions that would have equal application in all parts of Canada and to both languages:
- a) Any person may use English or French:
 - i) in the debates of Parliament and, with reservations expressed by some provinces, in the legislatures;
 - ii) in any pleading or process in federal courts;
 - iii) in communication with the federal administration.
 - b) Federal statutes and instruments shall be in both languages.
 - c) The individual shall have the right to have English or French as his main language of instruction in publicly supported schools in areas where the language of instruction of his choice is chosen by a sufficient number of persons to justify the provision of the necessary facilities. It was recognized that some further consideration will have to be given by various governments in order to determine appropriate administrative arrangements to implement the provision, what constitutes a "sufficient number", and what should be the percentage of instruction in the main language. Quebec lodged a general reservation with respect to this subparagraph pending an examination of all its implications.

- d) Parliament or a legislature may accord further recognition to the two languages.

Supreme Court

6. It was agreed that the existence and the independence of the Supreme Court of Canada should be entrenched in the Constitution, which should also provide for its basic structure. Its jurisdiction would continue to be that of a court of final appeal for the country. It was also agreed that while the Federal Government should retain the power of appointment to the Court, the Constitution should recognize the importance of provincial participation in the process of selection of suitable candidates for appointment. It was also concluded that study should be given to the means of assuring the availability on the Court of civil law judges to hear civil law appeals. It was agreed, in addition, that there should be discussion of the jurisdiction of the Supreme Court to hear appeals in matters of strictly provincial law.

Regional Disparities

7. Recalling their conclusion on the subject of regional disparities at the working session in September, the First Ministers agreed that the Constitution should include a recognition of the importance of equality of opportunity for all Canadians. It was therefore concluded that the reduction of regional disparities should be referred to both in a new preamble and in the body of the Constitution.

- a) The preamble should state that one objective of Confederation is the social, economic, and cultural development, and the general welfare and equality of opportunity for all citizens in whatever region they may live;
- b) In the body of the Constitution there should be a statement of obligation on all governments, federal and provincial.
 - i) to promote equality of opportunity and well-being for all individuals;
 - ii) to ensure, as nearly as possible, that essential public services of reasonable quality will be available to individual citizens,
 - iii) to promote economic development which will reduce disparities in the social and economic opportunities of individual Canadians in whatever region they may live.

This obligation would not be enforceable by the Courts and would not have the effect of altering the distribution of legislative powers.

Mechanisms of Federal-Provincial Relations

- 8. It was agreed that the revised Constitution should contain a provision, probably in the preamble, recognizing the important role of intergovernmental consultation and cooperation in the effective working of Canadian federalism. Also, in order to provide for the basic mechanisms of federal-provincial consultation, there should be a specific provision

that the Government of Canada shall at least once a year consult with provincial governments about the desirability of holding a Conference of First Ministers.

Modernization of the Constitution

9. Finally, the First Ministers agreed that work will be undertaken between now and the next meeting of the Constitutional Conference in June to propose specific alterations in the Constitution such as a new preamble and the deletion of spent and irrelevant provisions. Specific proposals in this respect will be brought forward for consideration by the Conference in June.

Next Step

10. It was recognized that the next steps would include further bilateral discussions leading up to the next meeting of First Ministers, and in addition as required, the on-going coordinating work of the Continuing Committee of Officials.

PART IISocial Policy

1. The Conference heard the views of the Government of Quebec on social policy in general and income security in particular. Quebec emphasized a broad conception of social policy and the importance of fitting income security measures into a global integrated policy with the objective of meeting effectively the problem of poverty. The Conference expressed its sympathy for this basic social objective. Quebec emphasized the fact that the existing distribution of legislative powers cannot be maintained if it impedes the realization of that objective. In addition, Quebec considers that the question of social policy is a fundamental element of the constitutional revision as a whole.
2. The federal government, for its part, expressed its desire to coordinate its income security measures with the social policies of the provinces, in order that each provincial government as well as the federal government may best realize its social objectives. There is and should continue to be room for different social policies in different provinces.
3. In regard to the Quebec proposals in particular, the federal government noted that what was suggested in regard to family allowances was very similar to the proposed federal Family Income Security Plan. The

Quebec statement also indicated that the Old Age Security Pension and Guaranteed Income Supplement would fit into its plans. Similar improvements in the Quebec and Canada Pension Plans have also been proposed.

4. Already decisions have been made to modify certain features of the proposals for amending the Unemployment Insurance Act on the basis of the information and arguments advanced by Quebec Ministers. Only in the case of the General Social Allowance Plan does there appear to be the necessity for further time and study to ascertain what is practicable during the near future.
5. The Conference was informed that bilateral discussions had already been planned between provincial and federal ministers and officials on these matters and their possible constitutional implications, and a further meeting of the Ministers of Welfare on income security was scheduled several months from now. The First Ministers asked that this work be accelerated and that the Ministers of Welfare report to the meeting of the First Ministers in June.

Canadian Interprovincial Marketing

6. Reference was made to current problems being encountered in connection with interprovincial marketing of certain agricultural products. The view was expressed that the problem had still not been solved, since the last discussion in September, and some provinces suggested that the Federal Government should exercise existing constitutional powers

to deal with the matter. A further suggestion by some provinces was that provincial marketing boards should retract certain regulations that affect the freedom of movement of goods, but another view was that this could not be done unless other action were taken to replace such regulations and avoid harm to local agricultural industries. In this connection, it was suggested that the Farm Products Marketing Agencies Bill, now before Parliament, could facilitate a satisfactory resolution of the problem.

7. It was also observed that the question of inter-provincial trade was a fundamental constitutional question which should be examined at a later meeting of the Conference.

Environmental Management - Pollution

8. The Constitutional Conference examined proposals for constitutional changes in jurisdiction related to the control of pollution.
9. In particular, the First Ministers considered a federal proposal that there should be a new concurrent power for Parliament and the provincial legislatures to make laws in relation to the control of pollution of air and water. Under this proposal, if there were a conflict between a federal law made under this power and a provincial law made under it, the federal law would prevail when it applies to control pollution which has, or if permitted would have, significant international or interprovincial effects, but in other circumstances the provincial law would prevail over the federal law.

10. Some First Ministers expressed interest in this proposal. Another view, however, was that new provisions could better be considered after there has been more experience in dealing with pollution; in the meantime, it would be preferable to rely on improved arrangements for coordination and cooperation between governments based upon existing constitutional provisions. A further view was that areas of exclusive federal and provincial jurisdiction would be preferable to the general concurrency which has been proposed.
11. It was agreed that the implications of various constitutional approaches should be given further study.

Other Business

12. The Conference received a report from the Continuing Committee of Officials on Paramountcy as Applied to Public Retirement Insurance, and accepted the recommendations regarding additional study.

Next Meeting

13. The Constitutional Conference confirmed that it would meet next on June 14-16 in Victoria, and that the meeting would be public, at least in part.

PART IIINON-CONSTITUTIONAL MATTERSUnemployment

1. The First Ministers discussed the unemployment situation across Canada, and expressed their concern for the problems being encountered by many Canadians this winter. Several First Ministers urged the Government of Canada to take additional action to alleviate the problem.
2. The Minister of Finance of Canada outlined the policies of the Government of Canada to combat unemployment, and stated that present indicators point to increasing economic growth and declining unemployment as the year progresses. He stressed that over-reaction would aggravate the problem by causing a resurgence of the inflationary spiral.
3. It was generally agreed that the federal and provincial governments should consult together concerning any possible additional steps which might be taken to alleviate the present situation.

CONSTITUTIONAL CONFERENCE

VICTORIA

JUNE 14-16, 1971

CONCLUSIONS OF THE MEETING

1. The 7th meeting of the Constitutional Conference was held in Victoria on June 14-16, 1971, on the occasion of the 100th anniversary of the entry of British Columbia into Confederation.
2. The Conference discussions dealt with constitutional provisions as set forth in a Charter which is based on the consensus arrived at in the Working Session of the Constitutional Conference in February 1971. While that consensus was the starting point, the negotiations at the Victoria Conference have been extensive and far-reaching. The First Ministers have agreed that the texts as drafted are of such importance that they should be reported to all governments for consideration. If the Charter, which is to be treated as a whole, is accepted, and this acceptance is communicated to the Secretary of the Constitutional Conference by Monday, June 28th, 1971, governments will recommend the Charter to their Legislative Assemblies and, in the case of the federal government, to both Houses of Parliament.
3. The acceptance of the Charter by both Houses of Parliament and by the Legislative Assemblies would enable the necessary action to be taken to patriate the Canadian Constitution, so that the power to amend and to enact constitutional provisions will rest exclusively with the Canadian people.

4. The proposed Charter also contains the terms of a formula for amending the Constitution entirely within Canada, and a number of other provisions to be incorporated into the Constitution at the time of patriation. These provisions are concerned with certain basic political and language rights, regional disparities, the Supreme Court of Canada, federal-provincial consultation, and the repeal of reservation and disallowance. In addition, a number of steps would be taken to bring the language of the Constitution up to date, including the renaming of certain enactments, and the deletion of spent and irrelevant provisions.
5. The Constitutional Conference also discussed the subject of social policy. It agreed to include in the proposed Charter an amendment to Section 94A of the B.N.A. Act by adding to its provisions family, youth and occupational training allowances. In addition, a new sub-section is to be added requiring consultation by the Government of Canada with provinces on any proposed legislation in relation to a matter covered by the revised section.
6. An early meeting of First Ministers will be held to discuss all aspects of federal-provincial fiscal arrangements, including tax reform, shared-cost programs, equalization and tax sharing.
7. First Ministers expressed their appreciation to the Prime Minister of British Columbia for his hospitality in receiving the Conference in Victoria in his province's centennial year.

(ii) VICTORIA CHARTER

CANADIAN CONSTITUTIONAL

CHARTER

1971

PART I
POLITICAL RIGHTS

Art. 1 It is hereby recognized and declared that in Canada every person has the following fundamental freedoms:

freedom of thought, conscience
and religion,
freedom of opinion and expression,
and
freedom of peaceful assembly and of
association;

and all laws shall be construed and applied so as not to abrogate or abridge any such freedom.

Art. 2. No law of the Parliament of Canada or the Legislatures of the Provinces shall abrogate or abridge any of the fundamental freedoms herein recognized and declared.

Art. 3. Nothing in this Part shall be construed as preventing such limitations on the exercise of the fundamental freedoms as are reasonably justifiable in a democratic society in the interests of public safety, order, health or morals, of national security, or of the rights and freedoms of others, whether imposed by the Parliament of Canada or the Legislature of a Province, within the limits of their respective legislative powers, or by the construction or application of any law.

Art. 4. The principles of universal suffrage and free democratic elections to the House of Commons and to the Legislative Assembly of each Province are hereby proclaimed to be fundamental principles of the Constitution.

Art. 5. No citizen shall, by reason of race, ethnic or national origin, colour, religion or sex, be denied the right to vote in an election of members to the House of Commons or the Legislative Assembly of a Province, or be disqualified from membership therein.

Art. 6. Every House of Commons shall continue for five years from the day of the return of the writs for choosing the House and no longer, subject to being sooner dissolved

by the Governor General, except that in time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by the Parliament of Canada if the continuation is not opposed by the votes of more than one third of the members of the House.

Art. 7. Every Provincial Legislative Assembly shall continue for five years from the day of the return of the writs for the choosing of the Legislative Assembly, and no longer, subject to being sooner dissolved by the Lieutenant-Governor, except that when the Government of Canada declares that a state of real or apprehended war, invasion or insurrection exists, a Provincial Legislative Assembly may be continued if the continuation is not opposed by the votes of more than one third of the members of the Legislative Assembly.

Art. 8. There shall be a session of the Parliament of Canada and of the Legislature of each Province at least once in every year, so that twelve months shall not intervene between the last sitting of the Parliament or Legislature in one session and its first sitting in the next session.

Art. 9. Nothing in this Part shall be deemed to confer any legislative power on the Parliament of Canada or the Legislature of any Province.

PART II

LANGUAGE RIGHTS

Art. 10. English and French are the official languages of Canada having the status and protection set forth in this Part.

Art. 11. A person has the right to use English and French in the debates of the Parliament of Canada and of the Legislatures of Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, Prince Edward Island and Newfoundland.

Art. 12. The statutes and the records and journals of the Parliament of Canada shall be printed and published in English and French; and both versions of such statutes shall be authoritative.

Art. 13. The statutes of each Province shall be printed and published in English and French, and where the Government of a Province prints and publishes its statutes in one only of the official languages, the Government of Canada shall print and publish them in the other official language; the English and French versions of the statutes of the Provinces of Quebec, New Brunswick and Newfoundland shall be authoritative.

Art. 14. A person has the right to use English and French in giving evidence before, or in any pleading or process in the Supreme Court of Canada, any courts established by the Parliament of Canada or any court of the Provinces of Quebec, New Brunswick and Newfoundland, and to require that all documents and judgments issuing from such courts be in English or French, and when necessary a person is entitled to the services of an interpreter before the courts of the other Provinces.

Art. 15. An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and of the Governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland.

Art. 16. A Provincial Legislative Assembly may, by resolution, declare that any part of Articles 13, 14, and

15 that do not expressly apply to that Province shall apply to the Legislative Assembly, and to any of the provincial courts and offices of the provincial departments and agencies according to the terms of the resolution, and thereafter such parts shall apply to the Legislative Assembly, courts and offices specified according to the terms of the resolution; and any right conferred under this Article may be abrogated or diminished only in accordance with the procedure prescribed in Article 50.

Art. 17. A person has the right to the use of the official language of his choice in communications between him and every principal office of the departments and agencies of the Government of Canada that are located in an area where a substantial proportion of the population has the official language of his choice as its mother tongue, but the Parliament of Canada may define the limits of such areas and what constitutes a substantial proportion of the population for the purposes of this Article.

Art. 18. In addition to the rights provided by this Part, the Parliament of Canada and the Legislatures of the Provinces may, within their respective legislative jurisdictions, provide for more extensive use of English and French.

Art. 19. Nothing in this Part shall be construed as derogating from or diminishing any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Part with respect to any language that is not English or French.

PART III
PROVINCES AND TERRITORIES

Art. 20. Until modified under the authority of the Constitution of Canada, Canada consists of ten Provinces, named Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, two Territories, named the Northwest Territories and the Yukon Territory, and such other territory as may at any time form part of Canada.

Art. 21. There shall be a Legislature for each Province consisting of a Lieutenant-Governor and a Legislative Assembly.

PART IV
SUPREME COURT OF CANADA

Art. 22. There shall be a general court of appeal for Canada to be known as the Supreme Court of Canada.

Art. 23. The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada, and eight other judges, who shall, subject to this Part, be appointed by the Governor General in Council by letters patent under the Great Seal of Canada.

Art. 24. Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the Bar of any Province, has, for a total period of at least ten years, been a judge of any court in Canada or a barrister or advocate at the Bar of any Province.

Art. 25. At least three of the judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the Bar of the Province of Quebec, have, for a total period of at least ten years, been judges of any court of that Province or of a court established by the Parliament of Canada or barristers or advocates at that Bar.

Art. 26. Where a vacancy arises in the Supreme Court of Canada and the Attorney General of Canada is considering a person for appointment to fill the vacancy, he shall inform the Attorney General of the appropriate Province.

Art. 27. When an appointment is one falling within Article 25 or the Attorney General of Canada has determined that the appointment shall be made from among persons who have been admitted to the Bar of a specific Province, he shall make all reasonable efforts to reach agreement with the Attorney General of the appropriate Province, before a person is appointed to the Court.

Art. 28. No person shall be appointed to the Supreme Court of Canada unless the Attorney General of Canada and the Attorney General of the appropriate Province agree to the appointment, or such person has been recommended for appointment to the Court by a nominating council described in Article 30, or has been selected by the Attorney General of Canada under Article 30.

Art. 29. Where after the lapse of ninety days from the day a vacancy arises in the Supreme Court of Canada, the Attorney General of Canada and the Attorney General of a Province have not reached agreement on a person to be appointed to fill the vacancy, the Attorney General of Canada may inform the Attorney General of the appropriate Province in writing that he proposes to convene a nominating council to recommend an appointment.

Art. 30. Within thirty days of the day when the Attorney General of Canada has written the Attorney General of the Province that he proposes to convene a nominating council, the Attorney General of the Province may inform the Attorney General of Canada in writing that he selects either of the following types of nominating councils:

- (1) a nominating council consisting of the following members: the Attorney General of Canada or his nominee and the Attorneys General of the Provinces or their nominees;
- (2) a nominating council consisting of the following members: the Attorney General of Canada or his nominee, the Attorney General of the appropriate Province or his nominee and a Chairman to be selected by the two Attorneys General, and if within six months from the expiration of the thirty days they cannot agree on a Chairman, then the Chief Justice of the appropriate Province or if he is unable to act, the next senior judge of his court, shall name a Chairman;

and if the Attorney General of the Province fails to make a selection within the thirty days above referred to, the Attorney General of Canada may select the person to be appointed.

Art. 31. When a nominating council has been created, the Attorney General of Canada shall submit the names of not less than three qualified persons to it about whom he has sought the agreement of the Attorney General of the appropriate Province to the appointment, and the nominating council shall recommend therefrom a person for appointment to the Supreme Court of Canada; a majority of the members of a council constitutes a quorum, and a recommendation of a majority of the members at a meeting constitutes a recommendation of the council.

Art. 32. For the purpose of Articles 26 to 31 "appropriate Province" means, in the case of a person being considered for appointment to the Supreme Court of Canada in compliance with Article 25, the Province of Quebec, and in the case of any other person being so considered, the Province to the Bar of which such person was admitted, and if a person was admitted to the Bar of more than one Province, the Province with the Bar of which the person has, in the opinion of the Attorney General of Canada, the closest connection.

Art. 33. Articles 26 to 32 do not apply to the appointment of the Chief Justice of Canada when such appointment is made from among the judges of the Supreme Court of Canada.

Art. 34. The judges of the Supreme Court of Canada hold office during good behaviour until attaining the age of seventy years, but are removable by the Governor General on address of the Senate and House of Commons.

Art. 35. The Supreme Court of Canada has jurisdiction to hear and determine appeals on any constitutional question from any judgment of any court in Canada and from any decision on any constitutional question by any such court in determining any question referred to it, but except as regards appeals from the highest court of final resort in a Province, the Supreme Court of Canada may prescribe such exceptions and conditions to the exercise of such jurisdiction as may be authorized by the Parliament of Canada.

Art. 36. Subject to this Part, the Supreme Court of Canada shall have such further appellate jurisdiction as the Parliament of Canada may prescribe.

Art. 37. The Parliament of Canada may make laws conferring original jurisdiction on the Supreme Court of Canada in respect of such matters in relation of the laws of Canada as may be prescribed by the Parliament of Canada, and authorizing the reference of questions of law or fact to the Court and requiring the Court to hear and determine the questions.

Art. 38. Subject to this Part, the judgment of the Supreme Court of Canada in all cases is final and conclusive.

Art. 39. Where a case before the Supreme Court of Canada involves questions of law relating to the civil law of the Province of Quebec, and involves no other question of law, it shall be heard by a panel of five judges, or with the consent of the parties, four judges, at least three of whom have the qualifications described in Article 25, and if for any reason three judges of the Court who have such qualifications are not available, the Court may name such ad hoc judges as may be necessary to hear the case from among the judges who have such qualifications serving on a superior court of record established by the law of Canada or of a superior court of appeal of the Province of Quebec.

Art. 40. Nothing in this Part shall be construed as restricting the power existing at the commencement of this Charter of a Provincial Legislature to provide for or limit appeals pursuant to its power to legislate in relation to the administration of justice in the Province.

Art. 41. The salaries, allowances and pensions of the judges of the Supreme Court of Canada shall be fixed and provided by the Parliament of Canada.

Art. 42. Subject to this Part, the Parliament of Canada may make laws to provide for the organization and maintenance of the Supreme Court of Canada, including the establishment of a quorum for particular purposes.

PART V

COURTS OF CANADA

Art. 43. The Parliament of Canada may, notwithstanding anything in the Constitution of Canada, from time to time provide for the constitution, maintenance, and organization of courts for the better administration of the laws of Canada, but no court established pursuant to this Article shall derogate from the jurisdiction of the Supreme Court of Canada as a general court of appeal for Canada.

PART VI

REVISED SECTION 94A

Art. 44. The Parliament of Canada may make laws in relation to old age pensions and supplementary benefits including survivors' and disability benefits irrespective of age, and in relation to family, youth, and occupational training allowances, but no such law shall affect the operation of any law present or future of a Provincial Legislature in relation to any such matter.

Art. 45. The Government of Canada shall not introduce a bill in the House of Commons in relation to a matter described in Article 44 unless it has, at least ninety days before such introduction, advised the Government of each Province of the substance of the proposed legislation and requested its views thereon.

PART VII

REGIONAL DISPARITIES

Art. 46. The Parliament and Government of Canada and the Legislatures and Governments of the Provinces are committed to:

- (1) the promotion of equality of opportunity and well being for all individuals in Canada;
- (2) the assurance, as nearly as possible, that essential public services of reasonable quality are available to all individuals in Canada; and
- (3) the promotion of economic development to reduce disparities in the social and economic opportunities for all individuals in Canada wherever they may live.

Art. 47. The provisions of this Part shall not have the effect of altering the distribution of powers and shall not compel the Parliament of Canada or Legislatures of the Provinces to exercise their legislative powers.

PART VIII

FEDERAL-PROVINCIAL CONSULTATION

Art. 48. A Conference composed of the Prime Minister of Canada and the First Ministers of the Provinces shall be called by the Prime Minister of Canada at least once a year unless, in any year, a majority of those composing the Conference decide that it shall not be held.

PART IX

AMENDMENTS TO THE CONSTITUTION

Art. 49. Amendments to the Constitution of Canada may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assemblies of at least a majority of the Provinces that includes

- (1) every Province that at any time before the issue of such proclamation had, according to any previous general census, a population of at least twenty-five per cent of the population of Canada;
- (2) at least two of the Atlantic Provinces;
- (3) at least two of the Western Provinces that have, according to the then latest general census, combined populations of at least fifty per cent of the population of all the Western Provinces.

Art. 50. Amendments to the Constitution of Canada in relation to any provision that applies to one or more, but not all, of the Provinces may from time to time be made by proclamation issued by the Governor General under the Great Seal of Canada when so authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each Province to which an amendment applies.

Art. 51. An amendment may be made by proclamation under Article 49 or 50 without a resolution of the Senate authorizing the issue of the proclamation if within ninety days of the passage of a resolution by the House of Commons authorizing its issue the Senate has not passed such a resolution and at any time after the expiration of the ninety days the House of Commons again passes the resolution, but any period when Parliament is prorogued or dissolved shall not be counted in computing the ninety days.

Art. 52. The following rules apply to the procedures for amendment described in Articles 49 and 50:

- (1) either of these procedures may be initiated by the Senate or the House of Commons or the Legislative Assembly of a Province;
- (2) a resolution made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Art. 53. The Parliament of Canada may exclusively make laws from time to time amending the Constitution of Canada, in relation to the executive Government of Canada and the Senate and House of Commons.

Art. 54. In each Province the Legislature may exclusively make laws in relation to the amendment from time to time of the Constitution of the Province.

Art. 55. Notwithstanding Articles 53 and 54, the following matters may be amended only in accordance with the procedure in Article 49:

- (1) the office of the Queen, of the Governor General and of the Lieutenant-Governor;
- (2) the requirements of the Constitution of Canada respecting yearly sessions of the Parliament of Canada and the Legislatures;
- (3) the maximum period fixed by the Constitution of Canada for the duration of the House of Commons and the Legislative Assemblies;
- (4) the powers of the Senate;
- (5) the number of members by which a Province is entitled to be represented in the Senate, and the residence qualifications of Senators;
- (6) the right of a Province to a number of members in the House of Commons not less than the number of Senators representing the Province;

- (7) the principles of proportionate representation of the Provinces in the House of Commons prescribed by the Constitution of Canada; and
- (8) except as provided in Article 16, the requirements of this Charter respecting the use of the English or French language.

Art. 56. The procedure prescribed in Article 49 may not be used to make an amendment when there is another provision for making such amendment in the Constitution of Canada, but that procedure may nonetheless be used to amend any provision for amending the Constitution, including this Article, or in making a general consolidation and revision of the Constitution.

Art. 57. In this Part, "Atlantic Provinces" means the Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland, and "Western Provinces" means the Provinces of Manitoba, British Columbia, Saskatchewan and Alberta.

PART X

MODERNIZATION OF THE CONSTITUTION

Art. 58. The provisions of this Charter have the force of law in Canada notwithstanding any law in force on the day of its coming into force.

Art. 59. The enactments set out in the first column of the Schedule, hereby repealed to the extent indicated in the second column thereof, shall continue as law in Canada under the names set forth in the third column thereof and as such shall, together with this Charter, collectively be known as the Constitution of Canada, and amendments thereto shall henceforth be made only according to the authority contained therein.

Art. 60. Every enactment that refers to an enactment set out in the Schedule by the name in the first column thereof is hereby amended by substituting for that name the name in the third column thereof.

Art. 61. The Court existing on the day of the coming into force of this Charter under the name of the Supreme Court of Canada shall continue as the Supreme Court of Canada, and the judges thereof shall continue in office as though appointed under Part IV except that they shall hold office during good behaviour until attaining the age of seventy-five years, and until otherwise provided pursuant to the provisions of that Part, all laws pertaining to the Court in force on that day shall continue, subject to the provisions of this Charter.

This Schedule is NOT final,
subject to confirmation

S C H E D U L E

Enactments	Extent of Repeal	New Name
British North America Act, 1867, 30-31 Vict., c. 3 (U.K.).	Long title; preamble; the heading immediately preceding section 1; sections 1, 5, the words between brackets in section 12; sections 19, 20, 37, 40, 41, 47, 50, the words "and to Her Majesty's Instructions" and the words "or that he reserves the Bill for the Signification of the Queen's Pleasure" in section 55; sections 56, 57, 63; the words between brackets in section 65; sections 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85, 86; the words "the Disallowance of Acts, and the Signification of Pleasure on Bills reserved" and the words "of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province for Canada" in section 90; head (1) of section 91; head (1) of section 92; 94A; sections 101, 103, 104, 105, 106, 107, 119, 120, 122, 123; the words between brackets in section 129; sections 130, 134, 141, 142; the heading immediately preceding section 146; sections 146, 147; the First Schedule; the Second Schedule.	Constitution Act, 1867.
An Act to amend and continue the Act 32 and 33 Victoria chapter 3; and to establish and provide for the Government of the Province of Manitoba, 1870, 33 Vict., c. 3 (Can.).	Long title; Enacting clause; sections 3, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 25.	Manitoba Act, 1870.
Order of Her Majesty in Council admitting British Columbia into the Union, dated the 16th day of May 1871.	The whole except terms 4, 9, 10, 13, 14 in the Schedule.	British Columbia Terms of Union.

Enactments	Extent of Repeal	New Name
British North America Act, 1871, 34-35 Vict., c. 28 (U.K.), and all acts enacted under section 3 thereof.	Long title; preamble, enacting clause; sections 1, 6.	Constitution Act, 1871.
Order of Her Majesty in Council admitting Prince Edward Island into the Union, dated the 26th day of June, 1873.	The whole, except the conditions in the Schedule relating to the provision of steam service and telegraphic communication between the Island and the mainland, the condition respecting the constitution of the executive authority and the Legislature of the Province, and the condition applying the British North America Act, 1867 to the Province.	Prince Edward Island Terms of Union
Parliament of Canada Act, 1875, 38-39 Vict., c. 38 (U.K.).	Long title; preamble, enacting clause.	Parliament of Canada Act, 1875.
Order of Her Majesty in Council admitting all British possessions and Territories in North America and islands adjacent thereto into the Union, dated the 31st day of July, 1880.	The whole, except the last paragraph.	Adjacent Territories Order.
British North America Act, 1886, 49-50 Vict., c. 35 (U.K.).	Long title; section 3.	Constitution Act, 1886.
Canada (Ontario Boundary) Act, 1889, 52-53 Vict., c. 28 (U.K.)	Long title; preamble; enacting clause.	Canada (Ontario Boundary) Act, 1889.

Enactments	Extent of Repeal	New Name
Canadian Speaker (Appointment of Deputy) Act, 1895, Session 2, 59 Vict., c. 3 (U.K.).	Long title; preamble, enacting clause, section 2.	Canadian Speaker (Appointment of Deputy) Act, 1895.
Alberta Act, 1905, 4-5 Edw. VII, c. 3 (Can.).	Long title; enacting clause, sections 4, 5, 6, 7, 12, 13, 15, 16(2), 18, 19, 20, Schedule.	Alberta Act.
Saskatchewan Act, 1905, 4-5 Edw. VII, c. 42 (Can.).	Long title; enacting clause; sections 4, 5, 6, 7, 12, 13, 14, 15, 16(2), 18, 19, 20, Schedule.	Saskatchewan Act.
British North America Act, 1907, 7 Edw. VII, c. 11 (U.K.).	Long title; preamble, enacting clause, section 2, Schedule.	Constitution Act, 1907.
British North America Act, 1915, 5-6 Geo. V, c. 45 (U.K.).	Long title; enacting clause, section 3.	Constitution Act, 1915.
British North America Act, 1930, 20-21 Geo. V, c. 26 (U.K.).	Long title; fourth paragraph of preamble, enacting clause, section 3.	Constitution Act, 1930.
Statute of Westminster, 1931, 22 Geo. V, c. 4 (U.K.). in so far as it applies to Canada.	Long title; the words "and Newfoundland" in sections 1 and 10(3); section 4 in so far as it applies to Canada; section 7(1).	Statute of Westminster, 1931.
British North America Act, 1940, 3-4 Geo. VI, c. 36 (U.K.).	Long title; preamble, enacting clause, section 2.	Constitution Act, 1940.
British North America Act, 1943, 7 Geo. VI, c. 30 (U.K.).	The whole.	
British North America Act, 1946, 10 Geo. VI, c. 63 (U.K.).	Long title; preamble, enacting clause, section 2.	Constitution Act, 1946.

Enactments	Extent of Repeal	New Name
British North America Act, 1949, 12 and 13 Geo. VI, c. 22 (U.K.).	Long title; third paragraph in preamble; enacting clause; sections 2, 3; terms 6(2), (3), 15(2), 16, 22(2), (4), 24, 27, 28, 29 in the Schedule.	Constitution Act, 1949.
British North America (No. 2) Act, 1949, 13 Geo. VI, c. 81 (U.K.)	The whole.	
British North America Act, R.S.C., 1952, c. 304 (Can.).	Section 2.	Constitution Act, 1952.
British North America Act, 1960, 9 Eliz. II, c. 2 (U.K.).	Long title; preamble; enacting clause; sections 2, 3.	Constitution Act, 1960.
British North America Act, 1964, 12 and 13, Eliz. II, c. 73 (U.K.).	Long title; enacting clause; section 2.	Constitution Act, 1964.
British North America Act, 1965, 14 Eliz. II, c. 4, Part I, (Can.).	Section 2.	Constitution Act, 1965.

(iii) PROPOSED PROCEDURE FOR PATRIATION

Text of federal proposal regarding the
procedure for patriation of the constitution accepted
by the Constitutional Conference of June 1971

. . .

Introduction

The Conclusions of the Working Session of the Constitutional Conference on February 8-9 stated as follows:

"Patriation of the Constitution

2. The Constitutional Conference agreed on a procedure to be undertaken in Canada at a very early date in order to bring home the Constitution and to transfer to the people of Canada, through their elected representatives, the exclusive power to amend and to enact constitutional provisions affecting Canada. This procedure would involve:

- (a) Agreement among the governments as to changes and procedure.
- (b) Approval of a resolution in the usual way, by legislatures plus the two Houses of Parliament, authorizing the issuance of a proclamation by the Governor General to contain the amendment formula and whatever changes are agreed upon.
- (c) Recommendation that the British Parliament legislate to:

- (i) recognize the legal validity of the Canadian proclamation and its provisions;
 - (ii) provide that no future British law should have application to Canada; and
 - (iii) make any consequential repeal or amendment of British statutes affecting the Canadian Constitution.
- (d) Issuance of the proclamation by the Governor General on a date to coincide with the effective date of the British law."

Thus, once the Constitutional Conference agrees on the texts of specific constitutional changes, there will be three major steps to be taken to achieve patriation: approval of the changes by legislatures of the provinces and by the Houses of the federal Parliament; legislation by the United Kingdom Parliament; and the issue of a Proclamation by the Governor General.

Resolutions of Approval

It is desirable that the main content and operative words of the resolutions submitted to the provincial and federal legislatures should be as uniform as possible. If there were to be wide variation, inconsistencies of language might result which could give rise at a later stage to questions as to whether there had in fact been consent to the same effect by the various legislative bodies. To avoid this difficulty, it would seem preferable that prior agreement be reached (at the Victoria meeting if possible) on an appropriate general form which first ministers could use in submitting the resolutions to their legislative bodies for approval. Essentially, the resolutions should approve the issuance of a Proclamation to bring into effect the Canadian Constitutional Charter as part of our Constitution. Perhaps a wording such as the following would be appropriate:

"... that this House [Assembly, etc.] approve the issuance of a Proclamation by the Governor General, proclaiming the following provisions respecting the Constitution of Canada to come into force on a date to be fixed by that Proclamation."

This would not of course preclude the inclusion of such other material in the resolutions, not inconsistent with this approval, as is appropriate for each legislative body. Because of certain procedural requirements the resolutions submitted to the Senate and House of Commons should probably contain the text of the Proclamation itself as well as the Charter.

The United Kingdom Enactment

After resolutions of approval have been adopted by legislative bodies in Canada, the British Parliament would be requested to pass appropriate legislation. The British enactment would refer to the approval expressed by legislative bodies in Canada for such constitutional changes, and would specifically recognize the validity of the Proclamation (containing the Canadian Constitutional Charter) to be issued subsequently by the Governor General. This recognition of validity is essential to remove any possibility of challenge in some court of law at some time concerning the legal and constitutional basis for the new provisions. The U.K. legislation would also terminate all remaining formal legislative authority which the British Parliament now has with respect to Canada.

Discussions will be held with the British government before the Victoria Conference to be sure that there are no legal or procedural problems that could cause difficulty and to ensure that preparations for this aspect of patriation may be effected as smoothly as possible.

Achievement of patriation will also involve the repeal of parts of the Statute of Westminster, 1931 as it applies to Canada. The provisions requiring repeal are section 4 as it applies to Canada, section 7 (1), and the references to Newfoundland as a separate Dominion in sections 1 and 10 (3). These changes

in the Statute of Westminster, 1931 have been provided for in the text relating to Modernization of the Constitution (already distributed)* which will form part of the Canadian Constitutional Charter to be given effect by the Governor General's Proclamation.

The Proclamation of the Governor General

As agreed in February, the final stage would be the Proclamation of the Governor General, issued in his name and under the Great Seal of Canada.

The Proclamation, after making appropriate reference to the changes as having been effected by the representatives of the Canadian people, would proclaim the Canadian Constitutional Charter which would form an Annex to it. The Charter and the United Kingdom statute would be designed to come into force at the same time.

Result

From the day of the coming into force of these instruments the Constitution of Canada (as modified thereby) will continue as before, but it will be fully amendable in Canada by the new amending procedure and there will no longer be any formal authority of the United Kingdom Parliament to alter it in any respect.

Depending on agreement on the proposals to be made on this subject, a final stage, which would require some time to accomplish, would be the consolidation of the various constitutional documents into a single, comprehensive statement of the legal provisions that constitute the "Constitution of Canada".

* see previous document.

APPENDIX C

PARTICIPANTS

(i) PARTICIPANTS: CONSTITUTIONAL CONFERENCE

CONSTITUTIONAL CONFERENCE

CANADA	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
(Delegates)							
Pearson, L.B. ¹	X						
Connolly, J.J.	X						
Laing, Arthur	X						
MacEachen, A.J.	X						
Marchand, Jean	X						
Martin, Paul	X						
Sharp, Mitchell	X						
Trudeau, P.E.	X						
Trudeau, P.E. ²		X	X	X	X	X	X
Basford, Ron		X			X	X	X
Benson, E.J.		X	X	X	X	X	
Davis, Jack							
Laing, Arthur				X		X	X
Lang, Otto				X		X	
MacEachen, A.J.		X		X			
Mackasey, Bryce						X	
Marchand, Jean		X	X	X	X	X	X
Martin, Paul		X	X	X			X
Munro, John C.		X		X		X	X
Olson, H.A.				X			
Pepin, Jean-Luc						X	
Pelletier, Gérard		X		X	X		X
Sharp, Mitchell		X					
Turner, John N.		X	X	X	X	X	X

1. Resigned April 1968.

2. Appointed April 1968.

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
<u>CANADA</u>						
(Advisers)						
Robertson, Gordon	X	X	X	X	X	X
Stoner, O.G.	X					
Beetz, Jean	X	X	X	X	X	X
Pitfield, P.M.	X					
Hodgson, J.S.	X	X		X	X	X
Lalonde, Marc	X	X				
Elie, Robert	X					
Maxwell, D.S.	X	X	X	X	X	X
Bédard, R.	X					
Thorson, D.S.	X					
Goldenberg, H. Carl	X	X	X	X	X	X
Head, Ivan L.	X	X	X	X	X	X
Strayer, B.L.	X	X	X	X	X	X
Bryce, R.B.	X	X	X	X		
Johnson, A.W.	X	X	X	X	X	X
Gallant, E.	X					
Cadieux, Marcel	X	X		X		
Gotlieb, A.E.	X	X				
Baudouin, M.	X					
Hodgson, S.M.	X	X		X		
Smith, J.	X	X		X		
Davis, Henry F.		X	X			
Tellier, Paul		X				
Millar, André		X		X		
LeBlanc, Roméo		X		X		
Smith, T.B.		X	X	X		
Côté, Jean		X			X	X
Shoyama, T.K.		X		X	X	
Searle, David		X		X		
McKinnon, J.K.		X		X		

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
Frazer, G.				X		X
Yalden, M.F.				X		X
Grandy, J.F.				X		
LaForest, G.V.				X		X
Carter, F.A.G.				X		X
Loranger, Miss J.				X		X
MacNeill, J.W.					X	
Willard, J.W.						X
Bissonnette, P.A.						X
Desjardins, Miss A.						X
MacKinnon, S.						X

(Observers)

Nowlan, J. Patrick (MP)
 McQuaid, Melvin J. (MP)
 Skoreyko, William (MP)
 Régimbal, Roger (MP)
 Asselin, Hon. Martial (MP)
 Baldwin, G.W. (MP)
 Aiken, Gordon H. (MP)
 Grafftey, Heward (MP)
 Laflamme, Ovide (MP)
 Loiselle, G. (MP)

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971
Gendron, R. (MP)	X					
McWilliam, G.R. (MP)	X					
Basford, R. (MP)	X					
Faulkner, J.H. (MP)	X					
Stewart, J.B. (MP)	X					
Chatwood, A. (MP)	X					
Richard, J.T. (MP)	X					
Honey, R.C. (MP)	X					
Douglas, T.C. (MP)	X			X		
Lewis, David. (MP)	X	X		X		
Brewin, Andrew (MP)	X	X		X		
Diefenbaker, Rt. Hon. J.G.		X		X		
Pearson, Rt. Hon. L.B.		X		X		
Deschatelets, Hon. J.P.		X		X		
Lamoureux, Hon. L.		X		X		
Flynn, Hon. J.		X		X		
Stanfield, Hon. R.		X		X		
Caouette, Réal		X				
Choquette, Senator L.		X				
Connolly, Senator J.J.		X		X		
Roebuck, Senator A.W.		X		X		
Laniel, Gérard (MP)		X				
Béchar, Albert (MP)		X				
Jerome, J.A. (MP)		X		X		
Hogarth, Douglas A. (MP)		X		X		
Chappell, H. (MP)		X				
Hees, Hon. George (MP)		X		X		
Woolliams, Eldon M. (MP)		X		X		
Laprise, Gérard (MP)		X				
Croll, Senator David				X		
Macdonald, Senator J.M.				X		

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
Allmand, Warren (MP)				X		
Corbin, Eymard (MP)				X		
Francis, Lloyd (MP)				X		
Gibson, Colin D. (MP)				X		
Givens, Philip G. (MP)				X		
Howard, B. (MP)				X		
Marceau, Gilles (MP)				X		
MacGuigan, Mark (MP)				X		
Noël, Aurélien (MP)				X		
Roberts, John (MP)				X		
MacDonald, David (MP)				X		X
Lasalle, Roch (MP)				X		
Yewchuk, Paul (MP)				X		
Beaudoin, Léonel (MP)				X		
Latulippe, Henry (MP)				X		
Molgat, Senator G. Chamberlist, N.				X		X
						X

CONSTITUTIONAL CONFERENCE

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971
ONTARIO						
(Delegates)						
Robarts, John P. ¹	X	X	X	X	X	X
Davis, W.G.	X	X				
Guindon, Fernand	X	X				
Kerr, George A.						X
MacNaughton, Charles		X	X	X	X	X
McKeough, W.D.				X		
Wishart, A.A.	X	X	X	X		X
Yaremko, John		X				
Davis, W.G. ²						X
Lawrence, Allan F.						X
McKeough, W.D.						X
Wells, T.L.						X

1. Resigned February 1971.

2. Appointed February 1971.

ONTARIO

(Advisers)

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971
						JUNE 1971
McIntyre, W.	X		X	X		
Reynolds, J.K.	X	X			X	X
Kinmond, W.	X	X		X		
Rathaun, W.A.	X					
Dick, A.R.	X		X	X	X	X
Callaghan, F.W.	X			X		
Macdonald, H.I.	X	X	X	X	X	X
Stevenson, D.W.	X	X	X	X	X	X
Greathed, E.D.	X	X		X	X	X
Beer, C.M.	X					
Posen, G.S.	X					
Brady, A.	X	X		X		
Lederman, W.	X	X		X		
Perry, J.H.	X	X		X		
Hansen, H.R.	X					
Campbell, A.M.				X	X	X
Low, David				X		
Speck, Robert						
Honey, C.P.						
Russell, T.M.					X	X
Thatcher, J.				X	X	
Borczak, M.					X	
Hilton, J.						X
Etchen, E.J.						X

(Observers)

Nixon, R.F.						X
MacDonald, D.C.	X			X		
Lewis, Stephen	X			X		X

CONSTITUTIONAL CONFERENCE

QUEBEC	(Delegates)	Dates of Meetings						
		FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
	Johnson, Daniel ¹	X						
	Bertrand, J.J.	X						
	Dozois, Paul	X						
	Johnston, Raymond	X						
	Masse, Marcel	X						
	Tremblay, J.N.	X						
	Bertrand, J.J. ²		X	X	X			
	Cardinal, Jean-Guy		X					
	Cloutier, Jean-Paul			X	X			
	Dozois, Paul		X	X				
	Gabias, Yves		X					
	Johnston, Raymond		X					
	Masse, Marcel		X		X			
	Tremblay, J.N.		X					
	Bourassa, R. ³					X	X	X
	Castonguay, Claude						X	X
	Choquette, Jérôme							
	Garneau, Raymond					X		
	Goldbloom, Victor						X	
	Levesque, Gérard					X		
	Parent, Oswald					X	X	X

1. Died September 1968.

2. Defeated April 1970.

3. Appointed May 1970.

QUEBEC

(Advisers)

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
Faribault, Hon. M.	X					
Morin, Claude	X		X			X
Frégault, Guy	X	X				
Cazavan, M.	X				X	
Bernard, L.	X	X	X			
Robichaud, J.	X	X				
Beaulieu, Mario	X					
Chouinard, Paul	X	X				
Pelletier, Charles	X	X		X		
Patry, André	X					
Cyr, Roger	X					
Bélanger, Marcel	X	X	X			
Chouinard, Julien	X	X			X	X
Loiselle, Jean	X					
Ladouceur, Antoine	X	X	X	X		
Bédard, Denis	X		X	X	X	
Marier, Roger		X		X		
Vaugeois, Denis				X		
Johnson, J.				X		
Beausoleil, Gilles				X		
Frigon, Gérard				X		
Langlois, Guy				X	X	X
Tremblay, Arthur				X	X	
Bouchard, L.P.				X	X	
Veilleux, G.				X	X	
Poulin, François				X	X	
Mathieu, Jacques				X	X	
Denis, Charles				X	X	X
Rivest, J.-C.				X	X	X
St. Jean, M.				X	X	X
Brière, J.				X	X	X
Dussault, R.				X	X	X
Audet, M.				X	X	X

CONSTITUTIONAL CONFERENCE

	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
NOVA SCOTIA							
(Delegates)							
Smith, G.I. ¹	X	X	X	X	X		
Donahoe, R.A.	X	X	X	X	X		
Doucet, G.J.	X	X		X	X		
Harding, J.M.	X						
McKeough, T.J.				X			
Regan, Gerald A. ²						X	X
Nicholson, P.M.						X	
Pace, L.						X	X
Sullivan, A.							X

1. Defeated October 1970.
2. Appointed October 1970.

Dates of Meetings

FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
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NOVA SCOTIA

(Advisers)

MacDonald, J.A.Y.	X					
MacLeod, Innis G.	X				X	
Muggah, H.F.	X	X				
Nason, H.M.	X			X		
Stevens, H.F.G.	X	X		X		
Beck, M.	X	X			X	
Fraser, D.	X					
Dalton, W.	X					
Kontak, W.	X					
Sommerville, T.W.	X					
Adamson, Agar	X					
Walker, Graham	X					
Parks, D.A.			X		X	
Goodfellow, E.L.			X			
Green, P.G.			X		X	
Smith, Randall					X	X
Robson, J.					X	
Thompson, David					X	X
MacKay, W.A.					X	X

(Observers)

Regan, G.A.	X					
O'Brien, Allan			X			

CONSTITUTIONAL CONFERENCE

NEW BRUNSWICK (Delegates)	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
Robichaud, Louis-J. ¹	X	X	X	X	X		
DesBrisay, L.G.	X		X		X		
Higgins, R.J.			X				
Jean, Bernard	X	X	X	X	X		
Meldrum, W.W.	X	X	X	X			
Hatfield, Richard B. ²						X	X
Baxter, J.B.M.						X	X
Cockburn, G.W.N.						X	
LeBlanc, J.-P.							X
Simard, J.-M.						X	

1. Defeated October 1970.

2. Appointed November 1970.

Dates of Meetings							
FEB.	FEB.	JUNE	DEC.	SEPT.	FEB.	JUNE	
1968	1969	1969	1969	1970	1971	1971	

NEW BRUNSWICK

(Advisers)

Rouse, D.	X	X	X	X	X		
Tansley, D.D.	X						
Hoyt, M.M.	X						
Forsyth, C.H.	X						
Ryan, W.F.	X	X	X	X	X		
Cohen, Maxwell	X	X	X	X	X		
Pichette, R.		X		X	X		
Mulder, N.		X		X	X		
Vachon, P.		X		X	X		
Toole, J.B.				X	X		
Bryden, J.					X		
O'Sullivan, J.						X	X
McAllister, G.						X	X
Arsenault, F.J.						X	X
Ligere, P.							X

(Observers)

Hatfield, R.	X
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CONSTITUTIONAL CONFERENCE

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MANITOBA (Delegates)	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
Weir, Walter ¹	X	X	X			
Evans, Gurney	X	X				
Lyon, S.R.	X	X	X			
McLean, S.E.		X				
Spivak, S.		X	X			
Schreyer, Edward ²				X	X	X
Allard, J.					X	
Cherniak, S.				X	X	X
Desjardins, Laurent				X	X	
Green, S.				X		
Mackling, A.H.				X	X	X
Miller, S.				X		
Uskiw, S.						X

1. Defeated June 1969.
2. Appointed July 1969.

FEB. 1968	Dates of Meetings					FEB. 1971	JUNE 1971
	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970			

MANITOBA

(Advisers)

Bedson, D.R.C.	X	X	X	X		X	X
Anderson, J. Stuart	X		X				X
Pilkey, Gordon E.	X		X				
Partridge, L.S.M.	X	X	X	X			
Moylan, D.W.	X						
Newall, Mrs. Mavis E.	X		X				
Scott, J. Douglas	X						
Donnelly, M.S.	X		X	X			
Alpin, Maurice J.	X						
Burns, Ronald M.	X						
Wallace, R.		X	X	X		X	
Donogh, N.R.		X					
Buddick, Mrs. G.		X					
Twaddle, A. Kerr		X					
Fox-Decent, W.N.		X					
Grose, R.E.		X					
Kushner, C.N.			X				
Gibson, Dale			X			X	X
Teffaine, Rhéal			X			X	
Rowland, Douglas			X				
Eady, F.K.				X			
Pilkey, G.							
Ouellette, A.						X	
Warner, P.						X	X
Janssen, W.						X	
Eliesen, M.							X

CONSTITUTIONAL CONFERENCE

<u>BRITISH COLUMBIA</u>	<u>Dates of Meetings</u>				
	<u>FEB.</u> 1968	<u>FEB.</u> 1969	<u>JUNE</u> 1969	<u>DEC.</u> 1969	<u>FEB.</u> 1971 <u>JUNE</u> 1971
(Delegates)					
Bennett, W.A.C.	X	X	X	X	X
Black, W.D.					X
Brothers, D.L.					X
Campbell, D.R.J.					X
Chabot, J.					X
Chant, W.N.					X
Gaglardi, P.A.					X
Kiernan, W.K.					X
Loffmark, R.R.					X
Peterson, L.R.		X	X	X	X
Richter, F.X.					X
Shelford, C.M.					X
Skillings, W.M.			X	X	X
Williston, R.G.					X

Dates of Meetings

FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
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BRITISH COLUMBIA

(Advisers)

Bryson, G.S.	X	X	X	X	X	X
Wing, Peter	X					
Kennedy, G.D.	X	X	X	X		X
Smith, M.H.	X	X	X	X	X	X
Gunderson, Einar M.						
Wallace, L.J.			X		X	X
Rickinson, E.R.						X
Ferguson, H.G.						X
Cheffins, R.I.						X
Higenbottam, A.						X

(Observers)

Dawson, Hon. Isabel Pearl						X
Jordan, Hon. Patricia Jane						X
McCarthy, Hon. Grace						X
Murray, Hon. W. H.						X
Barrett, David						X
McGeer, P.L.						X

CONSTITUTIONAL CONFERENCE

PRINCE EDWARD ISLAND	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
(Delegates)							
Campbell, A.B.	X	X	X	X	X	X	X
Bennett, Gordon L.		X					
Hickey, T.E.				X	X		
MacGuigan, Mark R.	X						
Maloney, John					X	X	X
Shaw, Walter R.		X					
Schurman, Robert						X	

PRINCE EDWARD ISLAND

(Advisers)

Moase, Lorne	X						
Gallagher, D.W.	X						
Wells, Andrew	X						
Boylan, Douglas B.	X						
Dennis, Douglas							
Green, J.E.							
White, Merlyn							
Hiscox, A.J.							
Sigsworth, D.F.							
Simmons, A.							

(Observer)

Nicholson, John P.

X

CONSTITUTIONAL CONFERENCE

	Dates of Meetings					
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971 JUNE 1971
SASKATCHEWAN (Delegates)						
Thatcher, Ross	X		X	X	X	X
Cameron, A.C.		X				
Coderre, L.		X				
Estey, C.L.B.		X				X
Heald, D.V.	X	X			X	*X
Hooker, James						X
Steuart, D.G.		*X	X	X		

* Head of Delegation.

		Dates of Meetings				
FEB.	FEB.	JUNE	DEC.	SEPT.	FEB.	JUNE
1968	1969	1969	1969	1970	1971	1971

SASKATCHEWAN

(Advisers)

Moore, James J.	X					
Meldrum, R.	X					X
Wakabayashi, A.T.		X				
Lloyd, Roy			X			
Sheard, D.				X		
Sihton, A.W.						X

(Observers)

McPherson, Donald	X					
Lloyd, W.S.	X					
Spinks, J.W.T.	X					
Murphy, Everett	X					
Loken, George					X	
Mitchell, Alex					X	

CONSTITUTIONAL CONFERENCE

	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
ALBERTA							
(Delegates)							
Manning, E.C. ¹	X						
Gerhart, E.H.	X						
Referson, R.	X						
Strom, Harry E. ²		X	X	X	X	X	X
Aalborg, A.O.		X	X	X	X	X	
Clark, Robert		X					X
Gerhart, E.H.		X	X	X		X	X
Patrick, A.R.						X	

1. Resigned December 1968.

2. Appointed December 1968.

FEB. 1968	Dates of Meetings					FEB. 1971	JUNE 1971
	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970			

ALBERTA

(Advisers)

Henkel, William							
Gagan, D.P.	X						
Frawley, J.J.	X	X				X	
Thompson, R.N. (MP)	X						
Sheppard, Russell A.			X				
Hamilton, D.M.	X						
Bowker, W.F.	X						X
Karoles, R.	X		X	X		X	X
Stewart, F.G.		X					
Anderson, O.A.		X	X	X		X	X
Meekison, J. Peter		X	X	X		X	X
Friedman, S.A.						X	X
Dolan, Charles						X	X
Gibbs, R.							X

(Observers)

Dent, Ivor	X
Brown, Ralph	X

CONSTITUTIONAL CONFERENCE

	Dates of Meetings						
	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
<u>NEWFOUNDLAND</u>							
(Delegates)							
Smallwood, J.R.	X	X	X	X	X	X	X
Callahan, W.R.				X		X	X
Crosbie, J.C.	X						
Curtis, L.R.	X			X	X	X	X
Earle, H.R.V.		X					
Hickman, T.A.	X	X	X				
Jones, E.S.				X	X		
Nolan, J.A.					X	X	X
Roberts, E.M.		X		X	X	X	X
Rowe, F.W.	X	X					
Rowe, W.N.				X	X	X	X

Dates of Meetings

	FEB. 1968	FEB. 1969	JUNE 1969	DEC. 1969	SEPT. 1970	FEB. 1971	JUNE 1971
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NEWFOUNDLAND

(Advisers)

Channing, J.G.	X		X			X	
Greene, Cyril	X			X			X
Roberts, Edward	X						
Perlin, A.B.	X	X	X			X	X
Whelan, H.		X					
Murphy, G.		X					
Groom, D.J.				X			
Mercer, D.W.				X			
Peper, D.				X		X	X
Gillis, G.					X		
Brownrigg, G.W.					X		
Adams, W.G.						X	X
Murphy, N.						X	X

(Observers)

Frecker, J.	X
Graham, W.C.	X

(11) PARTICIPANTS: CONTINUING COMMITTEE
OF OFFICIALS

CONTINUING COMMITTEE OF OFFICIALS

	Meeting Numbers													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
CANADA														
Robertson, R.G. (Chairman)	X	X	X	X	X	X	X	X	X	X	X		X	X
Ainslie, G.														
Allen, C.D.						X		X			X			
Austin, J.										X				
Beetz, J.	X	X	X	X	X	X						X		X
Brown, J.R.						X	X	X	X					
Bryce, R.B. *						X		X		X	X	X	X	X
Butler, M.E.		X	X	X	X									
Carter, F.A.G.										X		X	X	X
Davis, H.F.		X	X	X	X	X	X							
Desjardins, Miss A.										X				
Frazer, G.F.						X	X		X	X	X	X	X	X
Gallant, E.								X	X	X	X	X	X	X
Goldenberg, C.	X	X	X	X	X	X	X							
Gotlieb, A.E.	X	X	X	X	X									
Head, I.L.	X	X	X	X	X									
Hodgson, J.S.	X	X	X	X	X						X			
Ignatieff, N.											X			
Irwin, R.											X			
Johnson, A.W.	X	X	X	X	X	X	X	X	X	X				
Kent, T.														
LaForest, G.V.														
Léger, J.												X	X	X
Linton, I.						X								
Loranger, Miss J.											X			
MacNeill, J.W.											X	X	X	X
Maxwell, D.S.										X	X	X	X	
Millar, André	X	X	X	X	X	X	X							
Pitfield, P.M.								X						
Shoyama, T.K.	X					X	X							
Smith, T.B.		X	X	X	X	X	X		X		X	X	X	X
Strayer, B.L.		X	X	X	X	X	X		X	X	X	X	X	X
Tellier, P.		X	X	X	X	X								
Willard, J.W.									X			X		X

* Chairman of the 12th meeting.

CONTINUING COMMITTEE OF OFFICIALS

	1	2	3	4	5	6	7	8	9	10	11	12	13	14
	Meeting Numbers													

NEWFOUNDLAND

Channing, J.G. X X X X X X X X X X X X X X X
 Mercer, D.W. X X X X X X X X X X X X X X X
 Sametz, Z. X X X X X X X X X X X X X X X

PRINCE EDWARD ISLAND

Boylan, D. X X X X X X X X X X X X X X X
 Chatterton, E.F. X X X X X X X X X X X X X X X
 Dennis, G.D. X X X X X X X X X X X X X X X
 Massey, W.E. X X X X X X X X X X X X X X X
 Wells, Andrew X X X X X X X X X X X X X X X

NOVA SCOTIA

MacLeod, I.G. X X X X X X X X X X X X X X X
 Goodfellow, E.L. X X X X X X X X X X X X X X X
 Green, Peter X X X X X X X X X X X X X X X
 MacDonald, J.A.Y. X X X X X X X X X X X X X X X
 Nason, H.M. X X X X X X X X X X X X X X X
 Stevens, H.F.G. X X X X X X X X X X X X X X X
 Walker, Graham X X X X X X X X X X X X X X X

NEW BRUNSWICK

Forsyth, C.H. X X X X X X X X X X X X X X X
 Rouse, D. X X X X X X X X X X X X X X X
 McAllister, Professor G. X X X X X X X X X X X X X X X
 Cohen, Dean M. X X X X X X X X X X X X X X X
 Mulder, N. X X X X X X X X X X X X X X X
 Pichette, R. X X X X X X X X X X X X X X X
 Ryan, Dean W.F. X X X X X X X X X X X X X X X
 Simpson, R.L. X X X X X X X X X X X X X X X
 Toole, Barry X X X X X X X X X X X X X X X
 Vachon, Pierre X X X X X X X X X X X X X X X
 Williamson, J.L. X X X X X X X X X X X X X X X

CONTINUING COMMITTEE OF OFFICIALS

QUEBEC

	Meeting Numbers													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Morin, Claude	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Baillargeon, Jean				X	X	X	X							
Beausoleil, Gilles									X					
Bédard, Denis						X		X	X			X		
Bélanger, Marcel						X	X							
Bélanger, Michel								X	X	X		X		
Bernard, Louis							X	X						
Bouchard, Louis-P.	X	X	X	X	X	X	X	X	X	X		X	X	X
Brière, Jules												X		
Cazavan, M.												X		
Chouinard, Julien														X
Descoteaux, C.										X				
Duclos, J.									X					
Faribault, Marcel								X						
Frigon, Gérard									X					
Pelletier, Charles	X	X	X	X		X	X							
Poulin, François											X	X		
Robichaud, Jacques	X	X	X	X	X									
Simon, Jean														
Taillon, Jean													X	X
Tremblay, Arthur											X		X	
Turi, Joseph						X	X	X	X					X
Veilleux, Gérard											X	X	X	X

CONTINUING COMMITTEE OF OFFICIALS

ONTARIO

	Meeting Numbers													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Macdonald, H.I.	X	X	X	X	X	X	X	X	X	X	X		X	X
Balfour, Miss L.										X	X			
Beer, Charles	X	X	X	X	X									
Brannan, C.E.						X				X		X		
Burkus, J.														
Callaghan, F.				X	X	X		X						
Cameron, W.G.R.						X				X		X		
Careless, A.								X	X		X			
Chesney, M.								X	X		X			
Dick, A.R.	X	X	X	X	X	X	X	X	X			X	X	X
Gorecki, S.											X	X	X	X
Greathed, E.D.	X	X		X	X	X	X	X	X	X	X	X	X	X
Hanson, H.R.							X	X						
Hobbs, D.											X			
Honey, C.P.						X	X			X	X		X	X
Lishchynski, P.		X		X										
McGonigal, H.J.										X	X	X		
Mailhot, M.													X	X
Murray, A.			X				X					X		
Pillgrem, F.						X								
Ploeger, H.					X	X		X	X	X	X		X	X
Posen, Gary														
Rae, A.						X								
Russell, T.M.	X	X	X	X	X	X	X				X			
Stevenson, D.W.					X	X	X	X	X	X	X	X		X
Stow, W.									X					
Tar, K.W.												X		
Thatcher, J.														X
Wilensky, Mrs. J.			X		X			X	X					
Wouters, J.W.												X		
Wright, B.										X				

CONTINUING COMMITTEE OF OFFICIALS

	Meeting Numbers													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
<u>MANITOBA</u>														
Bedson, D.R.C.	X	X	X	X	X	X		X	X	X	X	X	X	X
Anderson, J.S.	X													
Eady, F.										X	X	X	X	X
Gibson, Professor D.										X				
Green, M.								X						
Ouellette, André							X				X			
Partridge, L.S.M.								X	X	X	X	X		
Rowland, D.C.								X	X					
Wallace, R.A.							X	X	X	X	X	X	X	X
Warner, Dr. P.														X

SASKATCHEWAN

Meldrum, R.S.	X	X	X	X	X	X	X	X		X	X	X	X	X
Lloyd, R.E.						X			X					
Schmeiser, D.A.					X									
Wakabayashi, A.T.						X		X						

ALBERTA

Frawley, J.J.	X	X	X	X	X	X	X	X	X					
Karoles, R.D.					X	X	X	X	X	X	X	X	X	X
Anderson, O.										X	X	X	X	X
Dolan, C.														
Meekison, Professor P.										X	X	X	X	X
Snyder, S.														
Stewart, F.G.						X	X					X		

BRITISH COLUMBIA

Bryson, G.S.	X													
Smith, M.H.				X	X	X	X		X	X	X	X	X	X
Kennedy, G.D.								X						

(iii) PARTICIPANTS: COMMITTEE OF MINISTERS
ON FUNDAMENTAL RIGHTS

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

Dates of Meetings
MAY NOV.
1969 1969

CANADA

Hon. John N. Turner	X	X
Hon. Jean-Luc Pepin	X	
Bédard, Rodrigue	X	X
Cantin, Jean-Charles		X
Goldenberg, C.	X	X
Maxwell, D.S.	X	X
Smith, T.B.	X	X
Strayer, B.L.	X	X

NEWFOUNDLAND

Hon. L.R. Curtis		X
Hon. T.A. Hickman	X	

PRINCE EDWARD ISLAND

McGuigan, J.A.	X	
Boylan, D.B.	X	

NOVA SCOTIA

Hon. R.A. Donahoe		X
Hon. J.M. Harding	X	
MacDonald, J.A.Y.	X	
MacLeod, I.G.	X	X
Stevens, H.F.G.		X

NEW BRUNSWICK

Hon. Bernard Jean		X
Cohen, M.	X	X
Rouse, D.	X	X
Ryan, W.F.	X	

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

<u>Dates of Meetings</u>	
<u>MAY</u>	<u>NOV.</u>
1969	1969

QUEBEC

Hon. Armand Maltais	X	
Hon. Rémi Paul	X	X
Baillargeon, Jean	X	
Bernard, Louis	X	X
Desjardins, André	X	
Dubé, A.	X	X
Turi, Joseph	X	X

ONTARIO

Hon. A.A. Wishart	X	X
Hon. D.A. Bales		X
Calaghan, F.W.	X	X
Dick, A.R.	X	X
Greathed, E.D.	X	X
Wilensky, Mrs. J.	X	

MANITOBA

Hon. Sterling R. Lyon	X	
Bedson, D.R.C.	XX	
Twaddle, A. Kerr	X	
Hon. Alvin H. Mackling		X
Bedson, D.R.C.		X
Johnston, William J.		X
Schmeiser, D.A.		X

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

<u>Dates of Meetings</u>	
<u>MAY</u>	<u>NOV.</u>
1969	1969

SASKATCHEWAN

Hon. D.V. Heald
Meldrum, R.S.
Schmeiser, D.A.

X	X
X	X
	X

ALBERTA

Hon. E.H. Gerhart
Frawley, J.J.
Hart, John E.
Karoles, R.D.
Schmeiser, D.A.

X	X
X	
X	
X	X
	X

BRITISH COLUMBIA

Hon. L.R. Peterson
Kennedy, G.D.
Smith, M.H.
Schmeiser, D.A.

X	X
X	X
X	X
	X

(iv) PARTICIPANTS: COMMITTEE OF MINISTERS
ON THE JUDICIARY

COMMITTEE OF MINISTERS ON THE JUDICIARY

CANADA

Hon. John N. Turner
 Hon. Jean-Luc Pepin
 Bédard, Rodrigue
 Beetz, J.
 Cantin, J.-C.
 Goldenberg, C.
 Maxwell, D.S.
 Smith, T.B.
 Strayer, B.L.

NEWFOUNDLAND

Hon. L.R. Curtis
 Hon. T.A. Hickman

PRINCE EDWARD ISLAND

Hon. J.E. Blanchard
 Boylan, D.B.
 McGuigan, J.A.

NOVA SCOTIA

Hon. R.A. Donahoe
 Hon. W.S.K. Jones
 Hon. H.A. Veniot
 MacDonald, J.A.Y.
 MacLeod, I.G.
 Stevens, H.F.G.

NEW BRUNSWICK

Hon. Bernard Jean
 Cohen, M.
 Rouse, D.
 Ryan, W.F.

Dates of Meetings

MAY
 1969

NOV.
 1969

X X
 X X
 X X
 X X
 X X
 X X
 X X
 X X

X X

X X
 X X

X X
 X X
 X X
 X X

X X
 X X
 X X
 X X

COMMITTEE OF MINISTERS ON THE JUDICIARY

450

QUEBEC

Hon. Armand Maltais
 Hon. Rémi Paul
 Baillargeon, Jean
 Bernard, Louis
 Desjardins, A.
 Dubé, A.
 Turi, Joseph

ONTARIO

Hon. A.A. Wishart
 Hon. A.F. Lawrence
 Callaghan, F.W.
 Dick, A.R.
 Greathed, E.D.
 Posen, G.

MANITOBA

Hon. Sterling R. Lyon
 Bedson, D.R.C.
 Twaddle, A. Kerr

Hon. Alvin H. Mackling
 Bedson, D.R.C.
 Donnelly, M.S.
 Gibson, Dale
 Johnston, William J.
 Teffaine, Rhéal

SASKATCHEWAN

Hon. D.V. Heald
 Meldrum, R.S.

Dates of Meetings

MAY 1969
 NOV. 1969

X X
 X X
 X X
 X X
 X X
 X X
 X X

X X
 X X
 X X
 X X
 X X

X X
 X X
 X X

X X
 X X
 X X
 X X
 X X
 X X

X X
 X X

COMMITTEE OF MINISTERS ON THE JUDICIARYDates of Meetings

MAY	NOV.
1969	1969

ALBERTA

Hon. E.H. Gerhart	X	
Hon. Ambrose Holowach		X
Frawley, J.J.	X	X
Hart, John E.	X	X
Karoles, R.D.	X	X

BRITISH COLUMBIA

Hon. L.R. Peterson	X	
Kennedy, G.D.	X	X
Smith, M.H.	X	X

(v) PARTICIPANTS: COMMITTEE OF MINISTERS
ON OFFICIAL LANGUAGES

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

CANADA

	Dates of Meetings		
	MAY 1969	NOV. 1969	MAY 1970
Hon. Gérard Pelletier	X	X	X
Hon. Ron Basford	X	X	X
Belkin, G.M.		X	X
Côté, Jean	X		
Davis, Henry F.	X		
Fortier, Guy			X
Gallant, Edgar			X
Henrie, M.	X		
Héroux, Maurice			X
Larose, Paul E.			X
Léger, Jules	X	X	X
McKinnon, R.	X		
Millar, A.S.	X		
Munroe, David			X
Ouellette, André	X		
Pronovost, Pierre			X
Smith, T.B.	X	X	
Tellier, P.	X	X	
Vennat, M.		X	
Yalden, M.F.	X	X	

NEWFOUNDLAND

Hon. Dr. G.A. Frecker
Hon. W.R. Callahan

PRINCE EDWARD ISLAND

Hon. Gordon L. Bennett
Boylan, Douglas B.
Gallant, J. Albert

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

	Dates of Meetings		
	MAY 1969	NOV. 1969	MAY 1970
<u>NOVA SCOTIA</u>			
Hon. Richard A. Donahoe	X		X
Hon. G.J. Doucet		X	X
Hon. D.R. MacLeod	X	X	X
Edwards, Stan			X
Gaudet, Alphonse			
MacDonald, J.A.Y.	X	X	
MacLeod, Innis G.	X		
McDonald, A.S.			X
Nason, H.M.		X	X
Stevens, H.F.G.		X	
<u>NEW BRUNSWICK</u>			
Hon. Louis-J. Robichaud	X	X	
Hon. W.W. Meldrum	X		X
Bouchard, G.		X	
Mulder, N.		X	
Rouse, D.	X		
Pichette, R.A.	X		
St-Onge, A.		X	X
Toole, Barry			X
Vachon, Pierre	X	X	X

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

	Dates of Meetings		
	MAY 1969	NOV. 1969	MAY 1970
<u>QUEBEC</u>			
Hon. Jean-Noël Tremblay	X	X	
Hon. Jean-Marie Morin	X		
Baillargeon, Jean	X		
Jobin, P.		X	
Labbé, Robert	X		
Lebrun, F.		X	
Mercier, M.		X	
Morin, Claude	X	X	
Morissette, R.	X	X	
Turi, Joseph	X	X	
Hon. François Cloutier			X
Baron, Miss Thérèse			X
Morin, Claude			X
Morissette, Raymond			X
Turi, Joseph			X
<u>ONTARIO</u>			
Hon. William G. Davis	X		X
Hon. F. Guindon	X	X	X
Balfour, Miss Lisa		X	X
Beer, Charles	X	X	X
Campbell, T.I.	X	X	X
Greathed, E.D.	X	X	X
Hobbs, David	X		
Larratt-Smith, Mark			X
Malone, Miss Colleen	X		

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

	Dates of Meetings			
	MAY 1969	NOV. 1969	MAY 1970	
<u>MANITOBA</u>				
Hon. Sterling R. Lyon	X			
Bedson, D.R.C.	X			
Hon. A.H. Mackling		X		X
Hon. Saul Miller				X
Bedson, D.R.C.		X		X
Desjardins, L.		X		
Donnelly, M.S.		X		
Gibson, D.		X		
Teffaine, R.				
Yuel, Robert W.				X
<u>SASKATCHEWAN</u>				
Hon. D.V. Heald	X	X		X
Hon. J.C. McIsaac				X
Bergstrom, L.H.	X	X		
Meldrum, R.S.				
<u>ALBERTA</u>				
Hon. E.H. Gerhart	X	X		X
Hon. A. Holowach	X	X		X
Frawley, J.J.	X	X		
Hart, J.E.	X	X		X
Karoles, R.D.		X		X
Lamoureux, P.A.		X		X
Rees, R.E.		X		X

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

	Dates of Meetings		
	MAY 1969	NOV. 1969	MAY 1970
BRITISH COLUMBIA			
Hon. L.R. Peterson	X	X	
Kennedy, G.D.	X	X	
Smith, M.H.	X	X	

(vi) PARTICIPANTS: COMMITTEE OF MINISTERS
ON THE SENATE

COMMITTEE OF MINISTERS ON THE SENATEDate of MeetingMAY
1969CANADA

Hon. Otto Lang	X
Hon. Paul Martin	X
Hon. Eric Kierans	X
Beetz, J.	X
Davis, Henry F.	X
Goldenberg, C.	X
Gotlieb, A.E.	X
Johnson, A.W.	X
Olson, E.R.	X
Strayer, B.L.	X

NEWFOUNDLAND

Hon. L.R. Curtis	X
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PRINCE EDWARD ISLAND

Hon. J. Elmer Blanchard	X
Boylan, D.B.	X
McGuigan, J.A.	X

NOVA SCOTIA

Hon. R.A. Donahoe	X
Hon. T.J. McKeough	X
MacDonald, J.A.Y.	X
MacLeod, I.G.	X

NEW BRUNSWICK

Hon. Louis-J. Robichaud	X
Cohen, M.	X
Rouse, D.	X
Ryan, W.	X

COMMITTEE OF MINISTERS ON THE SENATEDate of MeetingMAY
1969QUEBEC

Hon. Rémi Paul	X
Baillargeon, Jean	X
Bernard, Louis	X
Dubé, A.	X
Turi, Joseph	X

ONTARIO

Hon. John Yaremko	X
Hon. Robert Welch	X
Creathed, E.D.	X
Lishchynski, P.	X

MANITOBA

Hon. Sterling R. Lyon	X
Bedson, D.R.C.	X
Twaddle, A. Kerr	X

SASKATCHEWAN

Hon. D. Heald	X
Meldrum, R.S.	X

ALBERTA

Hon. E.H. Gerhart	X
Frawley, J.J.	X
Hart, John E.	X
Karoles, R.D.	X

COMMITTEE OF MINISTERS ON THE SENATEDate of Meeting

MAY

1969

BRITISH COLUMBIA

Hon. L.R. Peterson
 Kennedy, Gilbert
 Smith, M.H.

X

X

X

(vii) PARTICIPANTS: SUB-COMMITTEE ON
OFFICIAL LANGUAGES

SUB-COMMITTEE ON OFFICIAL LANGUAGES

CANADA

	Dates of Meetings				
	JULY 1968	OCT. 1968	APR. 1969	OCT. 1969	APR. 1971
Hodgson, J.S.	X	X			
Léger, Jules			X	X	X
Belkin, G.M.				X	
Côté, Jean		X	X		
Davis, H.F.			X		
Elie, Robert					
Héroux, M.	X				
Larose, P.E.					X
Lussier, C.A.					X
McKinnon, R.			X	X	
Millar, André				X	
Munroe, Dr. David				X	
Smith, T.B.				X	
Tellier, Paul			X	X	
Thorson, D.S.				X	
Veilleux, Gérard		X			
Vennat, Mrs. M.				X	
Yalden, M.F.			X	X	X

Royal Commission on Bilingualism
and Biculturalism

Dunton, A. Davidson
Findlay, Peter
Gagnon, Jean-Louis
Laing, Mrs. Stanley
Neatby, Blair

X
X
X
X
X

SUB-COMMITTEE ON OFFICIAL LANGUAGES

	<u>Dates of Meetings</u>				
	<u>JULY</u> 1968	<u>OCT.</u> 1968	<u>APR.</u> 1969	<u>OCT.</u> 1969	<u>APR.</u> 1971
<u>NEWFOUNDLAND</u>					
Hanley, P.J.	X				X
Andrews, C.					X
<u>PRINCE EDWARD ISLAND</u>					
Moase, L.	X	X			X
Boylan, D.B.			X	X	
<u>NOVA SCOTIA</u>					
MacLeod, I.G.	X	X	X	X	X
Edwards, S.					
MacDonald, J.A.Y.		X	X		X
Nason, Dr. H.M.	X	X		X	
Stevens, H.F.G.				X	
Walker, Graham				X	
<u>NEW BRUNSWICK</u>					
St-Onge, Armand	X	X		X	X
Arsenault, Leonard					X
O'Sullivan, James					X
Vachon, Pierre	X	X	X	X	

SUB-COMMITTEE ON OFFICIAL LANGUAGES

QUEBEC

Frégault, G.	X	X			
Baillargeon, Jean		X			
Baron, Miss Thérèse			X		X
Beaulieu, M.	X				
Lebrun, François					X
Morissette, R.			X		
Piquette, Roland					X
Robichaud, J.	X	X			
Turi, Joseph		X		X	X

ONTARIO

Beer, Charles					X
Bowen (Balfour), Mrs. Lisa	X	X	X	X	X
Campbell, T.			X		
Gordon, A.P.					X
Greathed, E.D.			X		
Hobbs, David			X	X	
Malone, Miss Colleen		X	X		
Omand, D.M.	X	X			

SUB-COMMITTEE ON OFFICIAL LANGUAGESMANITOBA

Bedson, D.R.C.
 Backeland, Gérald
 Davies, G.M.
 Tefaine, Rhéal
 Wallace, R.A.

Dates of Meetings				
JULY 1968	OCT. 1968	APR. 1969	OCT. 1969	APR. 1971

X	X	X	X	
		X	X	X
			X	
		X	X	

SASKATCHEWAN

Meldrum, R.S.
 Bergstrom, L.A.
 Poliquin, E.

X	X	X	X	X
X	X	X		

ALBERTA

Frawley, J.J.
 Karoles, R.D.
 Lamoureux, P.
 Rees, R.E.

X	X	X	X	X
	X	X	X	
			X	X

BRITISH COLUMBIA

Smith, M.H.
 Kennedy, Dr. G.D.

		X	X	
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(viii) PARTICIPANTS: SUB-COMMITTEE ON
DEATH DUTIES

SUB-COMMITTEE ON DEATH DUTIES

	Dates of Meetings		
	OCT. 1969	FEB. 1970	APR. 1970
<u>CANADA</u>			
Linton, W.I.	X	X	X
Ainslie, G.W.	X	X	X
Smith, E.H.	X	X	X
Garon, A.	X	X	
Clark, D.H.	X		
<u>NEWFOUNDLAND</u>			
Mercer, D.W.	X		
<u>NEW BRUNSWICK</u>			
Toole, B.	X		X
Mulder, N.			X
<u>QUEBEC</u>			
Bernard, Louis	X	X	X
Cordeau, Georges	X	X	X
Faribault, Marcel	X	X	
<u>ONTARIO</u>			
McClellan, D.J.	X	X	X
Stephenson, I.	X	X	X
Wychowanec, S.J.	X	X	X
Chesney, M.	X	X	X

SUB-COMMITTEE ON DEATH DUTIES

	Dates of Meetings		
	OCT. 1969	FEB. 1970	APR. 1970
<u>MANITOBA</u>			
Perry, C.A.	X	X	X
Eldridge, J.	X	X	
<u>SASKATCHEWAN</u>			
Stan, William	X		
<u>ALBERTA</u>			
Frawley, J.J.	X		
Karoles, R.		X	X

(ix) PARTICIPANTS: SUB-COMMITTEE ON
SALES TAXES

SUB-COMMITTEE ON SALES TAXES

CANADA

Irwin, R.
Ainslie, G.W.
Ash, R.J.
Jones, L.
Perrigo, H.

NEWFOUNDLAND

Mercer, D.W.
Abery, Cyril J.

NEW BRUNSWICK

Toole, B.
Mulder, N.
Simpson, L.

QUEBEC

Bernard, Louis
Guerci, V.P.
Bédard, Denis

ONTARIO

McClellan, D.J.
Wyhowanec, S.J.
Chesney, M.

Dates of Meetings
OCT. 1969 APR. 1970

X X
X X
X X
X X

X X

X X
X X

X X
X X
X X

X X
X X
X X

SUB-COMMITTEE ON SALES TAXESMANITOBA

Perry, C.A.
Eldridge, J.

SASKATCHEWAN

Stan, W.M.

ALBERTA

Frawley, J.J.
Karoles, R.D.

<u>Dates of Meetings</u>	
<u>OCT.</u>	<u>APR.</u>
1969	1970

X	X
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X	
---	--

X	X
---	---

X	
---	--

X	X
---	---

	X
--	---

(x) PARTICIPANTS: SUB-COMMITTEE ON
FUNDAMENTAL RIGHTS

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

	<u>Dates of Meetings</u>				
	<u>FEB.</u> 1970	<u>MAR.</u> 1970	<u>JUNE</u> 1970	<u>JUNE</u> 1970	<u>SEPT.</u> 1970
<u>CANADA</u>					
Smith, T.B.	X	X	X	X	X
Tarnopolsky, Dean W.S.	X	X	X	X	X
<u>PRINCE EDWARD ISLAND</u>					
Boylan, D.B.	X	X			
<u>NOVA SCOTIA</u>					
MacLeod, I.G.	X	X	X	X	X
<u>NEW BRUNSWICK</u>					
Rouse, D.G.	X				
Cohen, Professor M.		X	X	X	
Ryan, Dean W.F.	X				
<u>QUEBEC</u>					
Dubé, Antonio	X	X			
Bernard, Louis	X				
Desjardins, A.		X	X	X	X
Lapointe, C.	X	X			
Turi, Joseph			X	X	
<u>ONTARIO</u>					
Wright, Blennus	X	X	X	X	X
Mailoux, N.					X
Wilensky, Mrs. J.	X	X	X		

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

	Dates of Meetings				
	FEB. 1970	MAR. 1970	JUNE 1970	JUNE 1970	SEPT. 1970
<u>MANITOBA</u>					
Gibson, Professor Dale	X	X	X	X	
<u>SASKATCHEWAN</u>					
Schmeiser, Dr. D.A.	X	X	X	X	X
<u>ALBERTA</u>					
Schmeiser, Dr. D.A.	X	X	X	X	X
Karoles, R.		X	X	X	
<u>BRITISH COLUMBIA</u>					
Schmeiser, Dr. D.A.	X	X	X	X	X

(xi) PARTICIPANTS: SECRETARIAT

SECRETARIAT PERSONNEL 1968 - 1972Secretary

Beetz, J.

February 1968

Gallant, E.

May 1968 to July 1969

Davis, Henry F.

July 1969

Executive Director

Laver, E.W.

Bélec, G.G.

Programme Officers

Lyngseth, D.M.

Millar, A.S.

Côté, J.

Dufour, Mrs. V.

Down, Miss M.L.

Lachaine, J.C.

Dennison, D.G.

Wiper, J.J.

Ostiguy, P.

Forbes, B.

Byrne, D.

O'Leary, J.R.

Secondes

Posen, G.

Vachon, P.

Lishchynski, P.

Bourque, C.

Careless, A.

Swan, Mrs. R.

Ontario
 New Brunswick
 Ontario
 Quebec
 Ontario
 Canada

Translators

Morissette, A.

Briand, M.

Gaulin, J.-M.

Bazley, Mrs. M.

(xii) PARTICIPANTS: CONFEDERATION OF
TOMORROW CONFERENCE

CONFEDERATION OF TOMORROW CONFERENCE
November 27-30, 1967

LEADERS OF DELEGATIONS

Province

Alberta	Hon. E. C. Manning
British Columbia	Hon. R. W. Bonner (Attorney-General)
Manitoba	Hon. W. C. Weir
New Brunswick	Hon. L. J. Robichaud
Newfoundland	Hon. J. R. Smallwood
Nova Scotia	Hon. G. I. Smith
Ontario	Hon. J. P. Robarts
Prince Edward Island	Hon. A. B. Campbell
Quebec	Hon. D. Johnson
Saskatchewan	Hon. W. R. Thatcher

APPENDIX D

MEETINGS

(1) MEETINGS: LIST OF MEETINGS OF THE
CONSTITUTIONAL CONFERENCE
AND RELATED COMMITTEES

LIST OF MEETINGS OF THE CONSTITUTIONAL CONFERENCE
AND RELATED COMMITTEES

CONSTITUTIONAL CONFERENCE

<u>NAME</u>	<u>PLACE</u>	<u>DATE</u>
Constitutional Conference - First Meeting	Ottawa*	February 5-7/1968
Constitutional Conference - Second Meeting	Ottawa	February 10-12/1969
Constitutional Conference - First Working Session	Ottawa	June 11-12/1969
Constitutional Conference - Third Meeting	Ottawa	December 8-10/1969
Constitutional Conference - Second Working Session	Ottawa	September 14-15/1970
Constitutional Conference - Third Working Session	Ottawa	February 8-9/1971
Constitutional Conference -	Victoria	June 14-16/1971

CONTINUING COMMITTEE OF OFFICIALS

Meeting No. 1	Mont Gabriel	May 29-30/1968
Meeting No. 2	Ottawa	July 25-26/1968
Meeting No. 3	Ottawa	Sept. 25-26/1968
Meeting No. 4	Ottawa	November 7-9/1968
Meeting No. 5	Ottawa	December 3-5/1968
Meeting No. 6	Ottawa	April 16-18/1969

* Not served by the Secretariat.

Meeting No. 7	Ottawa	May 22-23/1969
Meeting No. 8	Ottawa	Sept. 30-Oct. 1/1969
Meeting No. 9	Ottawa	November 17-18/1969
Meeting No. 10	Ottawa	March 23-24/1970
Meeting No. 11	Banff	June 15-17/1970
Meeting No. 12	Ottawa	Aug. 31-Sept. 1/1970
Meeting No. 13	Ottawa	Nov. 30-Dec. 1/1970
Meeting No. 14	Ottawa	Jan. 20-22/1971

COMMITTEE OF MINISTERS ON FUNDAMENTAL RIGHTS

Meeting No. 1	Ottawa	May 28-29/1969
Meeting No. 2	Ottawa	November 3-4/1969

COMMITTEE OF MINISTERS ON THE JUDICIARY

Meeting No. 1	Ottawa	May 29/1969
Meeting No. 2	Ottawa	November 4/1969

COMMITTEE OF MINISTERS ON OFFICIAL LANGUAGES

Meeting No. 1	Ottawa	May 27/1969
Meeting No. 2	Ottawa	November 6/1969
Meeting No. 3	Ottawa	May 25/1970

COMMITTEE OF MINISTERS ON THE SENATE

Ottawa	May 26/1969
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COMMITTEE OF MINISTERS ON REGIONAL DISPARITIES

Ottawa*	June 10/1969
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* Not served by the Secretariat.

SUB-COMMITTEE ON OFFICIAL LANGUAGES

Meeting No. 1	Ottawa	July 4-5/1968
Meeting No. 2	Ottawa	October 17-18/1968
Meeting No. 3	Ottawa	Scheduled for Apr. 19th Held April 18/1969
Meeting No. 4	Ottawa	October 2-3/1969
Meeting No. 5	Ottawa	April 5-6/1971

SUB-COMMITTEE ON DEATH DUTIES

Meeting No. 1	Ottawa	October 23/1969
Meeting No. 2	Ottawa	February 26-27/1970
Meeting No. 3	Ottawa	April 7/1970

SUB-COMMITTEE ON SALES TAXES

Meeting No. 1	Ottawa	October 22/1969
Meeting No. 2	Ottawa	April 6-7/1970

SUB-COMMITTEE ON FUNDAMENTAL RIGHTS

Meeting No. 1	Ottawa	February 4/1970
Meeting No. 2	Ottawa	March 25/1970
Meeting No. 3	Ottawa	June 1-2/1970
Meeting No. 4	Ottawa	June 29/1970
Meeting No. 5	Ottawa	September 28/1970

(ii) MEETINGS: CHART - THE PROCESS OF
CONSTITUTIONAL REVIEW

The Process of Constitutional Review

Processus de la révision constitutionnelle

